

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NETSPHERE, INC., ET AL. (Number 3: 09-CV-0988-F
Plaintiff, ()
vs. ()
JEFFREY BARON, ET AL. ()
Defendant. (June 19, 2009

Status Conference
Before the Honorable Royal Furgeson

A P P E A R A N C E S:

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18:00 1

P R O C E E D I N G S:

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THE COURT: Thank you very much. Please be seated. Welcome. Mr. Frye, will you please call the case.

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MR. FRYE: Netsphere, Inc., et al. versus Jeffrey Baron, et al., Cause Number 3:09-CV-0988-F.

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THE COURT: Could I have announcements for the plaintiff.

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MR. MACPETE: Yes, your Honor, John MacPete of Locke Lord on behalf of the plaintiffs, Netsphere. I have with me my client Munish Krishan as well as other representatives of Netsphere here.

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MR. RAWLS: Caleb Rawls on behalf of Jeffrey Baron. Mr. Baron is here with me as well as well as Mr. Bell.

07:01 15

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THE COURT: Excellent. Glad to have all of you here. Well, Mr. MacPete, tell me how we're doing. Come to the podium, if you would.

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MR. MACPETE: Your Honor, we have a couple of preliminary matters we were hoping to take up with the Court.

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MR. RAWLS: We have three total Mr. Rawls tells me. They have to do with the protective order that the parties have agreed to, counsel have signed off on. And if I could approach, I would like to present that to the

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07:01 1 Court and see if the Court is willing to sign that as
2 well.

3 THE COURT: Certainly. Agreed?

4 MR. RAWLS: Yes.

5 MR. MACPETE: Yes.

6 THE COURT: Pretty standard.

7 MR. MACPETE: Yes, it's a two-level
8 confidentiality agreement. There is a highly confidential
9 category, your Honor, which would require only outside
10 counsel's eyes to see trade secrets and that kind of
11 business information of the respective parties.

12 THE COURT: Well, I can see the lawyers have
13 been working hard. You even spelled my name right which
14 doesn't happen very often. Here you go, Mr. Frye. Go
07:03 15 ahead.

16 MR. MACPETE: The second administrative matter
17 we have is when we filed a TRO, your Honor, we originally
18 filed with Judge Lynn an agreed motion to seal. It was
19 agreed between the parties, and that was because the
20 settlement agreement which is the subject of this lawsuit
21 is a confidential agreement, and it contains important
22 trade secrets and other sensitive business information
23 from the parties. In addition, the issues that have come
24 up with respect to the settlement agreement also required
25 the disclosure of that kind of information.

07:03 1 Judge Lynn granted that agreed motion to seal,
2 and she allowed our TRO papers to be filed under seal.
3 Subsequent to that, she sealed the transcript of that
4 hearing. But her law clerk indicated that your Honor
5 would have to essentially take up the issue of either
6 sealing the whole case or other pieces of this where there
7 was going to be a discussion of the settlement agreement
8 or the sensitive business information.

9 Yesterday, while we were sort of in deposition
10 and discussing the discovery problems, there was a motion
11 to dismiss that was filed by other counsel on behalf of
12 the defendants, and it had certain exhibits attached to it
13 which included the settlement agreement and some other
14 confidential business information, and apparently that was
07:04 15 erroneously filed, not under seal, without a request for a
16 sealing. The counsel that are here in the courtroom and I
17 have conferred, and we have agreed that the case because
18 it surrounds this settlement agreement with that
19 confidential business information -- and the settlement
20 agreement itself being confidential -- that we would move
21 the Court jointly to seal this proceeding, the entire
22 case, because I think there is no way to sort of discuss
23 things that aren't going to be confidential and trade
24 secrets of the business without it being under seal, and
25 that's pretty much what this whole case is about.

07:05 1 THE COURT: Well, it's a problem to seal court
2 proceedings, and you know, to seal court filings. We are
3 open courts. In other words, you are telling me in this
4 whole case I have to close and lock the courtroom and I
5 have to seal everything that is said in this Court and I
6 have to seal everything that's filed in this Court. And
7 that's not going to work. So you are going to have to
8 figure out something else about that. Now, I don't mind
9 sealing the confidentiality order, and I don't mind
10 sealing certain discreet parts of the pleadings. But for
11 example, you know, to just seal everything is
12 unacceptable. So you are going to have to figure out a
13 way to do this that it does not put the entire case under
14 seal, including this courtroom under seal. It's not
07:06 15 acceptable. So I am going to leave it to the parties to
16 do that. But if you can't come up with something, the
17 only thing I am going to seal is the settlement agreement.
18 I will open up all pleadings and everything else.

19 You are going to have to figure that out, and
20 I'll work with you on it, and it's a balance. But just
21 seal everything about this case -- the pleadings, the
22 courtroom, the transcripts -- that's not going to work.
23 So I am going to tell the lawyers, either you figure it
24 out or the only thing I'm sealing is the settlement
25 agreement.

07:06 1 MR. MACPETE: Okay, your Honor, we understand,
2 and we'll try to work on something that's more narrowly
3 tailored. At this point, your Honor, the most immediate
4 problem we have is that motion to dismiss that was filed
5 yesterday without a request --

6 THE COURT: Who find the motion, another party
7 to the case?

8 MR. MACPETE: No, it was other counsel for the
9 defendants. Maybe I ought to let Mr. Rawls speak to that
10 because my information is limited.

11 THE COURT: Mr. Rawls and Mr. Bell, do you not
12 represent all the Defendants here?

13 MR. RAWLS: Your Honor, the defendants' chief
14 counsel is Anthony Vitullo, who appears on the signing of
07:07 15 all the pleadings right now. I don't work for him, but I
16 did a lot of contract work for him. It's Mr. Bell's law
17 office. So I guess there is three sets of lawyers
18 representing Mr. Baron. Yesterday, Mr. Bell and I were at
19 Mr. MacPete's office from 8:30 a.m. to 10:30 p.m. trying
20 to work something out. During that time the motion to
21 dismiss was modified, finished off I guess and filed by
22 attorneys and Mr. Vitullo at Fee Smith. Just on my
23 Blackberry, I was unable to look it over very well at all,
24 and I was unaware that it was not being filed under seal,
25 and I was unaware at any point until Mr. MacPete told me

07:08 1 that the settlement agreement was attached. So I
2 apologize -- I guess on their behalf -- and on defendant's
3 behalf that happened. It was a mistake, and we are at an
4 agreement that at a minimum the settlement agreement
5 attached should be sealed, and if the Court's agreed, the
6 entire motion.

7 THE COURT: Where is Mr. Vitullo?

8 MR. RAWLS: He's on vacation. Coming back
9 sometime today. I think he would be back in the wee hours
10 Saturday morning.

11 THE COURT: Is the motion to dismiss also -- I
12 guess -- The parties seem to believe that we're going to
13 lock the courtroom door and have this entire matter
14 decided in secret.

07:09 15 MR. RAWLS: That's clearly unacceptable to the
16 Court, and Mr. MacPete and I will confer as soon as we
17 finish today and figure out something more palatable and
18 acceptable to the Court. Both sides are equally concerned
19 about the sensitive nature of the information contained in
20 the settlement agreement, and to the extent this case is
21 about enforcing that agreement and so it's very difficult
22 to keep that information out of the pleadings and just
23 seal the MOU, that's our concern right now.

24 THE COURT: Let me ask you and I may have missed
25 this. Was the complaint, the temporary restraining order,

07:10 1 the preliminary injunction -- Are they all under seal.

2 MR. RAWLS: I believe that's the case. There
3 was an agreed motion, and then Judge Lynn signed that
4 order, and so the TRO and the exhibits were I believe
5 filed under seal.

6 THE COURT: And the complaint itself?

7 MR. MACPETE: The complaint itself, your Honor,
8 is not filed under seal. We were extremely vague about
9 what the terms of the settlement agreement were
10 purposefully because it wasn't being filed under seal, and
11 it did not have the settlement agreement as an attachment.
12 So I wanted to make sure the record was clear.

13 THE COURT: The motion to dismiss, is it vague,
14 very specific or just the exhibits that are attached?

07:10 15 MR. MACPETE: To be honest with you, your Honor,
16 I haven't had time to read it yet. I was told by people
17 in my office that it had not been filed under seal and the
18 settlement agreement was an attachment, and I don't have
19 an assessment of how detailed it was about the terms. But
20 I'm obviously concerned that it is detailed.

21 THE COURT: Does anybody have a copy of the
22 motion to dismiss that is here?

23 MR. BELL: No, I don't, your Honor.

24 MR. RAWLS: We worked fourteen hours yesterday,
25 I should have brought a copy this morning. That was my

07:11 1 mistake.

2 THE COURT: Well, you guys have worked very
3 hard. I'm proud of you, and I'm not here to reproach hard
4 working lawyers.

5 MR. BELL: Your Honor, if we confer with Mr.
6 MacPete, we could do a motion to strike the pleading or
7 seal it and file something similar on Monday if he is
8 agreeable. Figure out a way to rectify whatever damage
9 has been caused by an oversight on the part of the law
10 firms on our side. So we're willing to do whatever the
11 Honorable Court would ask us to do.

12 THE COURT: I think that's probably not a bad
13 idea. Why don't we do this. I'll just take a verbal
14 motion to strike the pleadings and to remove the pleadings
07:12 15 from the Court. And I think we'll check with the clerk's
16 office after this is over and see if we can get that done
17 and you can file something Monday or Tuesday. Is there
18 any deadline here?

19 MR. BELL: I think we have a deadline, your
20 Honor. It was yesterday.

21 THE COURT: To file a motion to dismiss?

22 MR. BELL: Yes, your Honor, the 20th day. But
23 we can get it filed through the Court, through the
24 district -- I don't know how it works in terms of the ECF
25 filing system. But possibly the better thing to do would

07:12 1 be to bring it down to the courthouse. That way it's not
2 out on the internet, and it's part of you all's internal
3 system.

4 THE COURT: Why don't we stop a minute. Can you
5 get on EM/ECF here? Let us see if we can find it on
6 EM/ECF and see what it says.

7 MR. BELL: So your Honor is aware, it is out on
8 PACER right now, and there is -- And I think Mr. MacPete
9 could address some of the concerns, but it's out on PACER
10 right now, and I think he's unopposed to us getting it
11 struck and sealing it and refiling it without prejudice.

12 MR. MACPETE: I am. I will agree on the record
13 to their motion to strike that motion to dismiss, and I
14 will agree they can file another one and for it to be
07:13 15 under seal without prejudice.

16 THE COURT: Okay. Do me a favor. We'll have to
17 check with the Clerk's Office to see how this works.

18 THE COURT: While we're doing that, Mr. MacPete
19 had a third matter to take up.

20 MR. MACPETE: Yesterday at the end of the
21 evening, Mr. Rawls called me and said that his client had
22 raised an issue with respect to the order that had been
23 issued by Judge Lynn. Let me see if I can lay out what
24 they say their problem is. There is a uniform dispute
25 resolution procedure which can be utilized by a trademark

07:16 1 holder when there is a dispute about whether a domain name
2 infringes their trademark. Uniform dispute resolution
3 procedure. And it's something provided for by ICANN which
4 is the US government body that oversees the internet. And
5 so a trademark holder can file a UDRP, and it's decided by
6 an experienced trademark lawyer whether the domain name
7 violates the trademark holder's rights and if the
8 arbitrator, if you will, determines that's the case, the
9 only result that comes out is an order to the registrar to
10 transfer the domain name from the domain holder to the
11 trademark company. So those orders will periodically come
12 out, and the registrar is required by ICANN rules to
13 essentially change the who-is information which is like
14 record title for the domain name, and that's maintained by
07:17 15 the registrar. So one of the orders Judge Lynn entered at
16 our request is the registrar be prohibited from altering
17 in any way the records he has about domain names on his
18 registrar, and that's because the vast majority --
19 probably 99.5 percent on the registrar are domain names
20 owned by my client or were owned by my client and at issue
21 in this case.

22 Mr. Rawls last night raised with me the
23 potential problem of what happens if a UDRP order comes to
24 the registrar which basically directs him to change the
25 recorded title from the domain holder whoever that may be

07:17 1 to a trademark owner. That would technically be a
2 violation of Judge Lynn's order, and so we need some kind
3 of a modification or understanding of what we're supposed
4 to do. What I told him at the time what I believed Judge
5 Lynn would have told him if this issue was raised at the
6 TRO hearing is to talk to Mr. MacPete first and see if you
7 can work it out, and if not, we'll do something to modify
8 the order. What I told him last night is I understand the
9 process and that if they got such an order and he came to
10 me, I would be happy to agree that was an appropriate
11 change to the who-is information and not a violation of
12 the Court's order. So that's essentially the issue we
13 have. That's my proposal for how we would deal with it.
14 I will let Mr. Rawls tell the Court anything else he wants
07:18 15 about that.

16 THE COURT: Doesn't someone have to trigger this
17 process? It's not done automatically, is it?

18 MR. MACPETE: No, it has to be triggered by the
19 registrar after he has received an order as a result of
20 this process. It's a very verifiable thing. In other
21 words, the registrar gets the order, and Mr. Rawls could
22 show me the order. Here is the name on which the recorded
23 title needs to be changed. And I see it and that's fine.
24 And everybody would essentially agree that is an
25 appropriate change and not a violation of the Court's

07:19 1 order on TRO.

2 THE COURT: There doesn't seem to be anything in
3 the motion to dismiss that is -- that you know would
4 violate a trade secret. Is everything filed in every
5 court in every jurisdiction under complete seal?

6 MR. BELL: No, your Honor.

7 MR. MACPETE: No. The underlying state court
8 cases have not been filed under seal. But that's also
9 probably because the history of that case -- and it kind
10 of ended up being the lead of the three cases that were
11 involved in the underlying lawsuit -- is because no
12 discovery was ever taken in that case. So that case is
13 about as virgin as this case is because essentially what
14 happened is the cases got filed, there was a lot of
07:23 15 procedural maneuvering about which case would go first and
16 that sort of thing, and at the end of that we ended up
17 with about four mediations and face-to-face negotiations
18 between the parties. And ultimately the last negotiations
19 resulted after twenty-three hours in the settlement
20 agreement that's at issue in this case. So there really
21 wasn't a need for there to be a sealing order because
22 nothing substantive was ever discussed in that court.

23 THE COURT: And why -- Apparently there have
24 been lawsuits filed -- I'm reading the motion to
25 dismiss -- all over the place. What's the purpose of so

07:24 1 much litigation?

2 MR. MACPETE: I'll give you a little bit of
3 background on that, your Honor. Back in November of 2006,
4 my client, Manila Industries, Inc., had a portfolio of
5 domain names which had about 7,00 domain and .com names.

6 THE COURT: Your client owned all of those
7 names?

8 MR. MACPETE: Yes, sir. And Mr. Baron and
9 Ondova, the defendants in this case, were the registrar
10 for all of those names. And so of course, they are the
11 party that maintains the record title; that is, the who-is
12 information we have just been talking about. At some
13 point in 2005

14 THE COURT: Can the owner not be the registrar?

07:25 15 MR. MACPETE: The registrar is not supposed to
16 be the owner, by ICANN rules. And I'd say it's not an
17 absolute prohibition. The idea that I had was the
18 registrar himself was not supposed to warehouse names. So
19 it's probably not an absolute prohibition, and in fact,
20 Mr. Baron and Ondova had a small portfolio of their own
21 names, about two or three thousand names that he operated.

22 THE COURT: And Mr. Baron and Ondova have to go
23 through some process where they are certified as a
24 registrar?

25 MR. MACPETE: It's referred to as accredited.

07:26 1 That's true. They go through a process and get
2 accredited, and he's allowed to serve as a registrar, and
3 the registrar, your Honor, if you will, is essentially a
4 middle person between the operator and .com and .net.
5 Maybe we will back up. And if I'll telling your Honor
6 things you already know --

7 THE COURT: You are not.

8 MR. MACPETE: The way the domain name works is
9 say you have JudgeFurgeson.com and you want to register
10 the name. Ultimately, you get the name from VeriSign.
11 You don't contract with them directly.

12 THE COURT: That's an acronym?

13 MR. MACPETE: V-e-r-i-S-i-g-n.

14 THE COURT: What is VeriSign?

07:27 15 MR. MACPETE: It's the registry operator of the
16 .com and .net registry.

17 THE COURT: For the whole world?

18 MR. MACPETE: Yes, sir. So if you want to buy
19 JudgeFurgeson.com you have to go to a registrar and
20 register the domain name, and it will cost you essentially
21 \$7.02 plus fee the registrar charges you as their fee.

22 THE COURT: And so VeriSign certifies people
23 like Mr. Baron?

24 MR. MACPETE: It's actually ICANN that does that
25 and that's the government agency that is the regulatory

07:27 1 body for the internet.

2 THE COURT: Okay.

3 MR. MACPETE: And then he essentially interfaces
4 with the registry operators for the registries he
5 represents.

6 THE COURT: Okay.

7 MR. MACPETE: Let's say that John MacPete wants
8 to go to JudgeFurgeson.com. I will type in that name in
9 my browser window and a query will go out from my computer
10 to VeriSign because it's a .com name. And VeriSign has a
11 database which says, okay, JudgeFurgeson.com is registered
12 at Ondova, and Ondova servers are at this particular
13 location, and it will essentially forward the inquiry on,
14 and then it goes to Ondova's base, and you as the owner of
07:28 15 the domain name will have told him my web page is actually
16 hosted on this server.

17 THE COURT: That's a --

18 MR. MACPETE: Example of what the address would
19 look like. And that will route my inquiry on to a server
20 which is hosting your web page, and it comes up on the
21 screen. That's essentially how the domain names work. So
22 what happened is sometime in 2005, Mr. Baron approached my
23 client and said, Hey, you have a business that makes money
24 from advertising revenues by operating these hundreds of
25 thousands of domain names, and that makes a lot of money,

07:29 1 an I have been told that there is an economic development
2 program in the U.S. Virgin Islands, and if you go down
3 there and site your business there and employ local
4 people, you can get a 90 percent tax credit on your
5 income. That might be a really good thing for you, and
6 maybe we could go in business together, go down to the
7 U.S. Virgin Islands and take advantage of this tax credit.
8 So they hired a joint lawyer and worked on trying to
9 negotiate a joint business. Ultimately they weren't
10 successful in reaching an agreement about who would
11 control that joint business because the two individuals
12 involved have very different views about how to handle the
13 trademark lawsuits which are an inevitable result of
14 having a large portfolio of domain names, and these domain
07:30 15 names were registered by my client with a computer program
16 that registers them automatically. So no human being was
17 involved in deciding which names to register and actually
18 registering them. They have a fairly sophisticated
19 trademark filter today to register domain names, but that
20 doesn't catch everything that may be a domain name.
21 That's a trademark problem.

22 Anyway, after the negotiations essentially fell
23 through and the joint order was withdrawn for conflict of
24 interest because the two parties couldn't agree, there was
25 then a dispute about whether they had done enough for the

07:30 1 deal to go through. Mr. Baron took the position that the
2 deal had gone through, and my clients took the position
3 that it had not, and on November 13 of 2006, Mr. Baron
4 decided to engage in self-help.

5 THE COURT: There was no lawsuit filed to
6 resolve this dispute?

7 MR. MACPETE: No, there was no lawsuit filed at
8 that time. And what happened was as the registrar --
9 Remember, I told you that he has that database that has
10 the address for all the domain names would go that have
11 our web pages with our advertising, and then the
12 advertisers send us the money.

13 On November 13, 2006, Mr. Baron went to his
14 database which he physically has control over, and he
07:31 15 changed the addresses from where web traffic would go for
16 our domain names -- from the web pages owned by my
17 clients -- to web pages owned by someone else who then
18 paid representatives of Mr. Baron. So on the space of
19 twenty-four hours on November 13, 2006 he took down our
20 entire business and diverted all the revenues from that
21 business to these other on the theory he was somehow the
22 owner because this Virgin Islands deal had gone through
23 and he had the right to send that stuff down to the U.S.
24 Virgin Islands.

25 THE COURT: When you sign up with the registrar,

07:32 1 there is a contract?

2 MR. MACPETE: There is, your Honor.

3 THE COURT: And so Mr. Baron doesn't file a
4 lawsuit of any kind, breach of contract or whatever?

5 MR. MACPETE: No, he did not. But while he was
6 engaged in the process of taking down all of our web
7 pages, he went to the Dallas state court and filed a
8 declaratory judgment lawsuit, and in that declaratory
9 judgment lawsuit, he initially alleged that he was just
10 the registrar and that he wasn't really sure who he was
11 supposed to take orders from because he had claims from
12 his representatives in the U.S. Virgin Islands that said
13 they were the owner of the domain names as a result of
14 this failed negotiated transaction, and he had my clients
07:32 15 on the other hand saying they were the owners and who he
16 was supposed to take direction from. So he originally
17 asked the state court for a declaratory judgment about who
18 was the owner. My clients figured out very quickly that
19 their domain names were being hijacked, and they hired me,
20 and I filed a lawsuit in California federal court --
21 that's where my clients are sited -- for the hijacking of
22 their domain names, and that's the Central District of
23 California. So after that, we went to the parties working
24 with Mr. Baron and filed their own declaratory lawsuit in
25 the U.S. Virgin Islands. So those are the original three

07:33 1 cases, and all of those cases really revolved around who
2 owned the domain names that were originally registered by
3 my client. That portfolio referred to as the Manilla
4 Portfolio. Then there were various proceedings, removals
5 to federal court here. Other parties were brought into
6 the state court lawsuit that had been monetizing the
7 domains after they were taken from my client. So it's a
8 very complex and factually complex litigation.

9 In the end we had a 23-hour mediation on April
10 26, and we did reach a mediated settlement agreement, and
11 that settlement agreement is essentially what this lawsuit
12 is about. And if you will give me a second, your Honor.
13 May I approach? We have a copy of the settlement
14 agreement for you.

07:34 15 THE COURT: Apparently I have it here.

16 THE COURT: Lots of interlineations, right.

17 MR. MACPETE: Yes. It's not the prettiest
18 document in the world as you might imagine, your Honor,
19 after twenty-three straight hours of mediation.

20 THE COURT: Okay. I do have a copy.

21 MR. MACPETE: Thank you, your Honor. Some key
22 points to this, your Honor, are really on Page 4. If you
23 look at the first writing after all the lines that have
24 been crossed out, it says "This settlement agreement is
25 intended to be a full and final settlement agreement."

07:35 1 THE COURT: Page 4?

2 MR. MACPETE: Yes, sir.

3 THE COURT: Okay. The Page 4 I see here is all
4 in handwriting.

5 MR. MACPETE: I'm sorry, your Honor. I think
6 that may be miscopied. I think the original basically has
7 the first page looks like this. The second page is typed
8 in and interlineated.

9 THE COURT: I have a second page that looks like
10 this.

11 MR. MACPETE: That's actually the fourth page,
12 your Honor.

13 THE COURT: That's the fourth page? I guess it
14 was misfiled. I'm reading on the fourth page.

07:36 15 MR. MACPETE: On the fourth page the first
16 typewritten portion of it is what I was reading from.
17 This settlement agreement is intended to be a full and
18 final settlement agreement containing all material terms,
19 even though the parties may -- which is permissive --
20 prepare a more formal settlement document, release
21 language and dismissal papers. So on April 26 the
22 underlying litigations were all settled. If your Honor
23 turns to page --

24 THE COURT: That was the case in the Virgin
25 Islands, the case in California and the state court case

07:36 1 here in Texas?

2 MR. MACPETE: That's correct, your Honor. If
3 you turn to Page 2 which is the typewritten and
4 handwritten page, the key provision here is in Paragraph
5 3. Paragraph 3 says "Within fourteen days, the Manilla
6 Portfolio," which was the portfolio being fought about in
7 the underlying litigation, "will be split fifty-fifty
8 between the parties," the plaintiffs and the defendants in
9 this lawsuit, and that will be done by basically taking
10 the entire portfolio and alphanumericizing it and dividing
11 it into an even pile. So you get a complete random split
12 of the portfolio. And then there provides a coin flip
13 between the parties to determine which pile each party
14 gets.

07:37 15 After April 26 -- actually Before I say that,
16 your Honor, if you will turn to Paragraph 7. Paragraph 7
17 says Manila, my clients, defend existing trademark
18 litigation against the Manila Portfolio and indemnifies
19 Jeff -- that's Mr. Baron -- and Ondova from their
20 liability for those cases. At the settlement agreement
21 was entered into, there were about seven existing
22 trademark lawsuits that related to the Manila Portfolio
23 and under the settlement agreements my clients and myself
24 were directed to essentially take over the direction of
25 the defense of those cases and ultimately be responsible

07:38 1 for settling them or otherwise litigating them, as the
2 case may be.

3 So after the settlement agreement was entered
4 into, we began to perform that obligation, and there is a
5 trademark lawyer in Florida whose name is Mr. Herrera, and
6 he has been handling the third-party trademark litigation
7 prior to the settlement. So we left Mr. Herrera in the
8 case, but Mr. Herrera has been taking direction from me,
9 and we have actually settled a number of those trademark
10 cases that existed when the settlement agreement was
11 entered into.

12 About two weeks after the settlement agreement
13 was entered into, Mr. Baron apparently decided he didn't
14 like this deal anymore, and he started to refuse to
07:39 15 actually perform.

16 THE COURT: By refusing to perform, what does he
17 do?

18 MR. MACPETE: The first thing is April 29 --
19 Three days after this document was entered into, my client
20 escalated the split, and if you look at Paragraph 3, your
21 Honor, at the bottom of it there is a handwritten
22 interlineation that says "names subject to the lawsuit,"
23 singular, list created by Manila. And we were supposed to
24 come up with what the Manila was. It was our portfolio.
25 We registered it. We were to come up with the list and do

07:39 1 alphanumericizing and come up with the split, and we did
2 that on the 29th. Computer programmers from Manila are
3 here and alphanumericized the list, and it was split and
4 escalated to the parties upon April 29.

5 In addition on April 29, if your Honor will look
6 at Paragraph 9, it says "All parties will seek an agreed
7 order from the Court directing VeriSign to transfer
8 Manila's half of the portfolio to a registrar picked by
9 Manila within ten days." So the idea here basically was
10 you do the split, you flip the coin to figure out which
11 pile Manila gets, and then an agreed order is going to be
12 submitted to the state court to direct the registrar to
13 transfer our half of the domain names from Mr. Baron's
14 registrar to the registrar our choice.

07:40 15 When Mr. Baron started directing his lawyers not
16 to comply with the settlement agreement, they essentially
17 took the position that we're not going to accept the list
18 that you used to split the domain names. And the ironic
19 thing about that, your Honor, is that in negotiations with
20 Mr. Baron and Ondova last year, he provided a list which
21 he said was his best effort to have a complete list of the
22 Manila Portfolio from his perspective. When he turned it
23 over, he said it may not be entirely accurate, may have
24 some third-party customer names on it and/or one or two
25 names I own. But this is my best effort to come up with a

07:41 1 list. And as you might imagine, your Honor, there is not
2 a great deal of trust between the respective clients. Mr.
3 Baron does not trust my clients at all, and my clients
4 don't trust him at all. So what we ultimately did is we
5 said rather than use our own list, which of course Mr.
6 Baron is going to conclude is somehow a trick and
7 inaccurate, we'll use his list because we naively believed
8 if we used his list that would be noncontroversial, and
9 the settlement agreement would be achieved in a timely
10 fashion. And what my clients ultimately want is to have
11 the split occur and the businesses separated and everybody
12 to be able to go on with their lives apart. So even
13 though they didn't agree Mr. Baron's list was entirely
14 accurate and has names belonging to my client which are
07:42 15 not included on it, they ultimately made the business
16 decision that it was better to use the list and not fight
17 about the names missing than to have a big argument about
18 adding to it or using their own list.

19 Surprisingly, he then instructed his lawyers to
20 not agree to his list. His lawyers took the position that
21 they had the right under Paragraph 3 to come up with the
22 list of Manila domain names and to perform the split. So
23 we waited the fourteen days in the settlement agreement to
24 see what we would actually get and we got nothing. And
25 then I think on the 16th day after the settlement

07:43 1 agreement, he did propose a list. Not a split. Not the
2 alphanumericizing. But he sent over intense urging from
3 his counsel who finally sent over a list. And the problem
4 with his list at that point, your Honor, is that at the
5 time he turned over the list, there were 659,000 and
6 change domain names total that were registered on his
7 registrar. That would include the small number of
8 third-party customers he has, his individual domain names
9 which belong to him and our names. The list that he sent
10 over through his counsel sixteen days after the settlement
11 agreement was executed had 670,000 domain names on it. So
12 the instance we got the list and knew what the numbers
13 were, we knew it was inaccurate because it had more names
14 than he had on his registry. An analysis of his list
07:44 15 ultimately produced the conclusion that there were over
16 13,000 domain names on that list which are not registered
17 at his registry. In fact, most of those domain names are
18 not registered at any registry, meaning they are available
19 currently today for the public to pick them up.

20 The other significant thing about Mr. Baron's
21 new list was that it left off 9,928 domain names which had
22 been on the list that he produced in negotiations last
23 year. And all of those names were correctly spelled, and
24 they meant something. And of course, your Honor hasn't
25 seen any kind of a printout of this portfolio, but I

07:44 1 represent to the Court if we had the stacks of papers that
2 would be required to look at all of these names, what your
3 Honor would see is the portfolio is arduously composed of
4 names that are misspelled or names and numbers that don't
5 mean anything and that sort of thing, and one out of every
6 25 is a correctly spelled name that might mean something,
7 and as you imagine, your Honor, correctly spelled names
8 that mean something are more valuable than a name like 123
9 XYZ. So that's 9,900 names clearly represented -- Bless
10 you, your Honor.

11 THE COURT: So that brought you to this Court.

12 MR. MACPETE: That brought us to this Court.
13 That was clearly a cherry-picked list of names which he
14 was trying to avoid being part of the split.

07:45 15 THE COURT: By the way, were all the lawsuits
16 dismissed?

17 MR. MACPETE: No, they weren't dismissed, and
18 the reason they weren't dismissed is because of that
19 VeriSign order. So the way the settlement agreement was
20 supposed to work is, first, you have the split, and then
21 you have the coin flip to determine which pile belongs to
22 which company, and then there was to be a submission to
23 the state court on the VeriSign order. So the state court
24 needed to essentially remain open so that the Court was
25 available to issue the order on VeriSign and have those

07:46 1 domain names transferred.

2 THE COURT: Why wasn't this case just taken back
3 to the state court.

4 MR. MACPETE: It wasn't taken back to the state
5 court, your Honor, because these parties are divers. My
6 clients are in California, and Mr. Baron is located here
7 in Texas, and we felt more comfortable having this
8 contract enforced in federal court, and we had a right to
9 come in to this Court and ask for relief, and that's what
10 we did.

11 THE COURT: Had the state court judge done much
12 in this case?

13 MR. MACPETE: No. In fact, there hadn't been
14 any really substantive hearings prior to the entry of the
07:47 15 settlement agreement. There have been some scheduling
16 order hearings. No discovery had been exchanged. So the
17 state court really didn't have any sort of background that
18 was relevant anymore than this Court would.

19 THE COURT: So they weren't anymore advantaged
20 than this Court will be?

21 MR. MACPETE: That's correct.

22 THE COURT: Okay.

23 MR. MACPETE: And I direct you to what's
24 actually Page 3, which is the one with all the handwriting
25 on it. If you look at Paragraph 16, Paragraph 16 says

07:47 1 "dismissal with prejudice of the Texas case, California
2 case and U.S. Virgin Islands case once the court order is
3 granted and transfer by VeriSign is complete." So you can
4 see, your Honor, it was contemplated those courts were
5 going to remain open, not because anything was going to be
6 done in the underlying litigation but for the purposes of
7 having those domains transferred, and then those cases
8 would be dismissed. What's happened is those cases
9 haven't been dismissed because the defendants have refused
10 to essentially perform the coin flip and otherwise move
11 forward with the predicate before a motion to dismiss
12 those cases with prejudice can be filed.

13 Where we are currently in the state court, in
14 the underlying proceeding there is an open state court
07:48 15 matter with no live causes of action. If your Honor will
16 look back on Page 1, Paragraph 8, it provides for
17 immediate complete releases of all parties with a specific
18 carve out for another piece of litigation which isn't
19 relevant to what we're talking about here today. So we
20 have a state court case with no live causes of action.

21 And the other things that were happening
22 essentially is the domain names come up for renewal every
23 day. These names were registered on different days over
24 the course of an entire year, the entire portfolio. So
25 every day you have domain names coming up. And the way

07:49 1 that works is you have to pay the \$7.02 to ICANN to renew
2 the domain name. And that bill goes to the registrar. So
3 Ondova sends a the amount to VeriSign takes it out to pay
4 for the renewal. After the settlement agreement was
5 entered into, the defendants stopped performing the
6 settlement agreement because within fourteen days there
7 should have been a split and each side would have been
8 paying for the domain names which they ended up being the
9 owner. But prior to that, the registrar was basically
10 tasked with paying for those domain names, and that's
11 essentially in Paragraph 10, your Honor, if you look on
12 the first page.

13 THE COURT: Let me stop you a minute. It looks
14 like to me one of the problems we have is we need to
07:50 15 secure these domain names. Is that right?

16 MR. MACPETE: That's correct.

17 THE COURT: The parties disagree about what's
18 going on. Why can't I appoint a receiver to find a
19 registrar and require all the domain names to be given to
20 the receiver to be put with another registrar? What would
21 be a problem with that until we get this thing resolved?

22 MR. MACPETE: I think that would be a very
23 cumbersome procedure, your Honor.

24 THE COURT: Let me tell you. It may be a
25 cumbersome procedure, but this is crazy. This litigation

07:50 1 is literally crazy. Mr. Baron is just apparently throwing
2 these domain names every which way. You guys don't want
3 him to, but you are at his mercy, so to speak, and yet you
4 don't want to secure these domain names because apparently
5 no order or agreement according to your story will stop
6 Mr. Baron. He's going to do what he wants to do
7 regardless of the agreements or orders. If that's the
8 case, you know, looks like to me as long as these domain
9 names are -- According to your story, as long as they are
10 in his possession it doesn't make a difference what a
11 court does or what an agreement says.

12 MR. MACPETE: I wouldn't want to represent to
13 the Court that it's my belief he is going to violate the
14 TRO Judge Lynn issued. I guess I believe in the system,
07:51 15 and I think he is going to obey that order, and as Judge
16 Lynn put it, if he doesn't, he would be prosecuted to the
17 fullest extent of the law.

18 THE COURT: Of course, this is my case now, and
19 of course, judges don't like their orders not followed,
20 and if they are not followed, it's contempt. You can fine
21 people a million dollars a day. You can put people in
22 jail, do all sorts of things. So I understand your view
23 is that Mr. Baron will secure these names and not do
24 anything with them until we get this matter resolved, but
25 I don't know if he has the wherewithal to withstand

07:52 1 contempt orders in the millions of dollars. I don't know
2 what the value of these domain names are, but I imagine
3 they are incredibly valuable.

4 MR. MACPETE: They are around -- I guess I would
5 say under the pendancy of the underlying litigation there
6 was a Rule 11 agreement entered into between Mr. Baron and
7 Ondova and the U.S. parties in the underlying litigation,
8 and as a result of that agreement he was paid 5.6 million
9 dollars during the course of the underlying litigation. I
10 don't know what he has done with that money, your Honor,
11 but I think in the end if I were so bold to violate this
12 court's order, I think there is some funds there somewhere
13 to pay that kind of a contempt order. But I don't think
14 we're going to go there, your Honor and I'm hopeful this
07:53 15 problem is going to get resolved at our preliminary
16 injunction hearing on July 1st because I think the main
17 problem that we have had is we haven't had the split
18 accomplished. So there has been a split after the
19 performance agreement stopped about who is supposed to be
20 paying for the domain names prior to the split under the
21 settlement agreement. We think that's a responsibility of
22 the registrar. Nothing in the settlement agreement
23 suggests anybody else is supposed to pay it, and if your
24 Honor will look at Paragraph 10, Paragraph 10 says "any
25 monetization money received by any of the parties for

07:54 1 monetization of the Manila Portfolio before transfer of
2 Manila's half of the portfolio to Manilla will be split
3 fifty-fifty." That's gross. It doesn't provide for the
4 deduction of any expenses. And there are other
5 agreements, this Rule 11 I told you about, where things
6 will be split fifty-fifty. So they know how to draft an
7 agreement that says those expenses come off the top before
8 any money is split. And essentially, your Honor, that was
9 gross, and the registrar was going to be tasked with
10 paying the legals until the split was two-fold. Number
11 one, it provided incentive for him to get the split done
12 as fast as he could, and it was supposed to be done in
13 fourteen days, and he wouldn't pay very much renewal fees
14 within that time period.

07:55 15 The second reason, as I told your Honor, under
16 Paragraph 7 we took on the much greater financial burden
17 of handling the seven trademark litigations that are out
18 there, including a litigation from the University of Texas
19 in which there is a claim of statutory damages for
20 cyberspying of over four million dollars. So in the
21 relative weighing of what his responsibilities were going
22 to be before the split and our financial responsibilities,
23 we took on a lot more responsibility than he did. But
24 now, subsequent to the deal being entered into, he's
25 saying, no, no, I don't like that and you should pay for

07:56 1 half of the expenses prior to the split, and he's been
2 holding us hostage because, as you figured out, he has his
3 figure on the nuclear button.

4 THE COURT: Well, my goal is to maintain the
5 status quo. In other words, to protect the domain names.
6 That's my first goal. Let me talk to Mr. Rawls or Mr.
7 Bell for a minute.

8 MR. BELL: May I approach, your Honor?

9 THE COURT: Sure. Is Mr. Baron going to protect
10 the domain names pending this litigation? That's my
11 question.

12 MR. BELL: Absolutely, your Honor.

13 THE COURT: There is an order in place that
14 needs to be more specific. I will just say those names
07:57 15 are to be maintained in a proper order with payments made
16 to do the proper renewals and so forth until this
17 litigation is complete or another kind of order is
18 entered. And that's the order. And you are telling me
19 that Mr. Baron is committed to maintain the domain names
20 in an appropriate way and protect them in an appropriate
21 way until some other order is entered by the Court. Is
22 that correct.

23 MR. BELL: Prior to answering that question, Mr.
24 MacPete had about thirty minutes to give you a little
25 bit --

07:58 1 THE COURT: I understand. I'm trying to make
2 sure the status quo is maintained.

3 MR. BELL: I understand and if I can give you
4 some background that will be helpful.

5 THE COURT: It would be. And I'll give you a
6 chance to speak. All I'm saying is the status quo is
7 going to be maintained.

8 MR. BELL: With a qualifier.

9 THE COURT: What is that?

10 MR. BELL: You have to make the distinction
11 between Ondova, a registrar, and Jeff Baron who happens to
12 be the president but also beneficial owner through a bunch
13 of complicated trusts. So is Munish Krishan. And Mr.
14 MacPete represented to the Court that Mr. Baron had 5.6
07:58 15 million dollars. Munish got 4.3 I believe according to
16 representations made. But having said that, it's the
17 burden of the registrants, not the registrar, to pay for
18 renewal fees, and there is a provision in ICANN that says
19 you cannot as a registrar -- You cannot be paying for
20 registrant fees. If you were running for state judge, the
21 registrar can't pay your renewals. You need to pay, like
22 Go Daddy, Ondova, etcetera. So forcing Mr. Baron to pay,
23 -- Essentially what they are trying to do is make Mr.
24 Baron make a capital contribution to Ondova or some kind
25 of a bridge loan to float these renewal fees.

07:59 1 THE COURT: How much are the renewal fees?

2 MR. BELL: \$7.00 per domain. So I would -- I
3 think counsel and I can agree -- It sounds like my client
4 is a big thief in the middle of the night when I have
5 about 107 pages right now I can show your Honor, including
6 some other stuff, that would unequivocally without a
7 doubt -- if we had an evidentiary hearing right here and
8 now would -- cut Mr. MacPete's argument in half, and if I
9 put his client on the stand you are going to hear the
10 entire truth, and he has a lot more to hide than Mr.
11 Baron. I can show you now. I'm waiting for the
12 deposition of Mr. Krishan. I just want to make sure, your
13 Honor, before we cast a bad light on my client -- And you
14 know, Mr. MacPete, I understand his argument, but there is
08:00 15 several things, very, very material things, that undercut
16 his argument, and I understand this Honorable Court's
17 concern -- pay, I need to protect the four corners of this
18 MOU which contains these domain names.

19 THE COURT: I just need to protect the property.

20 MR. BELL: I agree, your Honor.

21 THE COURT: And so we're going to have a hearing
22 on what day?

23 MR. BELL: I believe it's July 1st.

24 THE COURT: So between now and July 1st, I just
25 need to protect the property. How many and what

08:01 1 dollars -- How much in dollars are we talking about
2 between now and July 1st to pay the renewal fees?

3 MR. BELL: I'm not sure of the exact amount.
4 But let me give you kind of a little background to that
5 question. That's a really good question, your Honor.
6 During the TRO hearing with Judge Lynn, part of this TRO
7 was Mr. Baron and Ondova are these bad guys and running
8 this enterprise, and they got the nuclear button and this
9 and that and he's the bleeding domain names. They rushed
10 into federal court. Meanwhile, there is a state court
11 proceeding they could file a motion to enforce and in fact
12 has been a motion to enforce. This MOU that you have in
13 front of you has been filed in state court, and there are
14 live pleadings in state court. There was the California
08:02 15 court, Virgin Islands twice. They appealed to a
16 California court and lost. Lost in California court.
17 This is like the fifth, sixth, seventh -- I don't know how
18 many times they have run in federal court. We have a
19 state case that's still live and pending that we can get
20 this thing resolved.

21 THE COURT: Does the state court judge have a
22 hearing before I do?

23 MR. BELL: I believe it's July 10th, your Honor.
24 And it's a motion to enforce. And the case has been
25 pending on the docket for two or three years because they

08:02 1 have a bunch of these procedural backgrounds.

2 THE COURT: There a TRO or preliminary
3 injunction pending in state court?

4 MR. BELL: No, your Honor, but we agree to the
5 same order in state court. With respect to judicial
6 comity, I understand that they think they can bring it in
7 this Court. I think all of this can get resolved in the
8 state court, and we can agree to a restraining order in
9 the state court that's somewhat parallel to the order in
10 this Court.

11 Let me go back to my earlier point. During the
12 TRO when they rushed us -- When Mr. Baron, the thief in
13 the middle of the night, has his finger on the nuclear
14 button and deleting the domain names -- They ran into
08:03 15 Judge Lynn's court and said you got to stop domain names.
16 By the way, we gave them plenty of warning. We need money
17 to keep these registration names, and they didn't do it.
18 And Judge Lynn in a second -- I can give it to her. She
19 picked it up quick, and said, Hey, if Baron and Ondova are
20 deleting domain names that are part of this portfolio
21 before the split and coin flip, why don't you give them to
22 the plaintiffs?

23 And I said -- I don't have a problem with that,
24 your Honor. I don't have a problem with that. And then
25 they came back and said No, no, no, your Honor, a lot of

08:04 1 them are tied to trademarks. He might give us a bunch of
2 trademark names and our philosophies are different --

3 THE COURT: Your proposal was -- the only reason
4 he was deleting the domain names was because he didn't
5 have money to register them?

6 MR. BELL: Let's back up. We have to make a
7 qualifier. Ondova is the registrar, a limited liability
8 company --

9 THE COURT: Okay. Regardless. Somebody didn't
10 have the money.

11 MR. BELL: Ondova cannot pay. It's in the red
12 and doesn't have the money to pay for these registration
13 fees.

14 THE COURT: Gee whiz, fellows, let's pay for
08:05 15 these things, keep these domain names -- Your suggestion
16 is instead of paying for them, Mr. Baron and Ondova just
17 transfer them over to Mr. MacPete's client?

18 MR. BELL: Pending the coin flip and performance
19 and the underlying state court action, in order to keep
20 Ondova afloat. They are already in the red with VeriSign
21 who's basically the God of .com and the .net registries.
22 And what he went in and did is, hey, try to figure out
23 what names are making a dollar because there is a business
24 between them, and I got plenty of evidence to show that
25 and e-mails, and you want to see it now or we can do it at

08:06 1 the PI hearing --

2 THE COURT: I guess you guys -- I'm sorry. You
3 and Mr. MacPete are both telling me more than I want to
4 know. My question is how do we maintain the status quo.
5 You are saying Ondova doesn't have money. And so he's
6 going to keep releasing these names as they come up for
7 renewal.

8 MR. BELL: No, based on the past deletions there
9 is enough money in there to keep Judge Lynn's order in
10 place. And basically what Judge Lynn and -- And Mr.
11 MacPete can correct me if I'm wrong. But Judge Lynn said,
12 hey, two parts. One, if you don't want the domain names,
13 Mr. Baron or Ondova, you can't afford to pay for them,
14 give them to the defendant. The defendant didn't want
08:06 15 them. They didn't want that liability, and we would have
16 taken them out of the portfolio and given them the coin
17 flip. They would have gotten more. I was okay with it.
18 But did they want that? No. So what they decided to do
19 was -- Judge Lynn asked me how many do you anticipate
20 deleting in order to keep VeriSign from canceling the
21 contract with Ondova who is the registrar? And that puts
22 in question the whole portfolio. That's really the issue
23 before the Court. I said after those deletions there is
24 \$2,500 to \$7,500 that would possibly be deleted in between
25 now and the PI hearing, and I believe that's still the

08:07 1 case today. And with respect to any domain names we
2 delete, we have to give the defendants a right of first
3 refusal, a 24 hour advance, right of first refusal on
4 whether or not they want to take those domains, but I
5 offered to give it to them anyway.

6 THE COURT: That's about \$52,000.

7 MR. BELL: Twenty-five --

8 THE COURT: \$7,500 maximum at \$7 a piece.

9 MR. BELL: Yes. So there is no irreparable --
10 That gets back to the whole irreparable harm thing.

11 THE COURT: But if you lose the domain names,
12 that's the harm.

13 MR. BELL: I agree, but we were willing to give
14 them to them.

08:08 15 THE COURT: I'm glad. For them that can't reach
16 any agreements, nobody wants to do what the other side
17 wants to do. They don't want to take the names. They
18 don't want to release the name. You don't want to keep
19 the names.

20 MR. BELL: We want to keep the names and work
21 with the client.

22 THE COURT: You are litigating in three
23 different courts.

24 MR. BELL: Four.

25 THE COURT: And you want to work together? I'm

08:08 1 having a hard time.

2 MR. BELL: I think we need to be locked in a
3 room over the weekend and nail this out and get it done,
4 and these people need to go on their separate ways.

5 THE COURT: There is no question about that.

6 MR. BELL: Put us in the jail. I will sit in
7 jail over the weekend, your Honor.

8 THE COURT: First of all, my main goal right now
9 is to protect the property that's at issue, and if we've
10 got \$52,000 or something -- Say we've got \$50,000 that we
11 need to protect the property between now and July 1st.
12 Somebody is going to have to pay that money, and we'll
13 worry about what happens later.

14 MR. RAWLS: Your Honor, I think maybe I can give
08:09 15 the Court a short answer to answer the Court's question.

16 THE COURT: What is the answer?

17 MR. RAWLS: I don't know why the order that
18 Judge Lynn made would not satisfy everyone between now and
19 July the 1st. I think Mr. MacPete -- the ever maybe it
20 wasn't an order he would have drafted or me bullet it will
21 protect the property. The court asked how well protect
22 the property between now and July 1st.

23 THE COURT: How.

24 MR. RAWLS: I represented to Judge Lynn that
25 some of these names that were being deleted because there

08:10 1 was no money to pay because it's registrants hadn't paid
2 Ondova. They were selected because they were worthless.
3 123 XYZ is not making money. There was a complaint when
4 that was deleted, and that led to the TRO. And Judge Lynn
5 said if they are not worth anything, give them to them.
6 And there was a problem and Judge Lynn fixed that and said
7 if you want to delete any names -- And our guess was 7,500
8 in that period. She said up to 7,500 names. During
9 business hours on a weekday if you were going to do that,
10 give them notice and then within 24 hours not to end on a
11 weekend or outside of business hours they have that much
12 time to basically step in and say we want those names, and
13 if that was going to happen, they would have to contact
14 the registrar of their choice which would contact Ondova
08:11 15 and arrange for the transfer and they would pay the
16 registration for the renewal fee. We're saying they are
17 not worth anything. They are costing us money.

18 THE COURT: Mr. MacPete, is that working?

19 MR. MACPETE: Yes, your Honor, and we're fine
20 with the order. Mr. Bell was re-arguing the order because
21 he doesn't like the notion that we're picking and
22 choosing, but there is a reason for that and that's
23 because there are names which are currently under these
24 UDRP processes or cease and desist letters or actual
25 litigation from a trademark owner, and there is a species

08:11 1 of cyber squatting liability called --

2 THE COURT: Please, you guys know so much more
3 than I do. Judge Lynn put an order in place. It will
4 work. Both sides agree.

5 MR. BELL: Yes, your Honor, absolutely. I don't
6 think your Honor needs to modify that order, and I'm okay
7 with it, and I believe Mr. MacPete is as well.

8 THE COURT: You realize that order is an order
9 of the Court. So any failure to comply with that order is
10 contempt, punishable by lots of dollars, punishable by
11 possible jail, death.

12 MR. BELL: And death.

13 MR. RAWLS: The only part about that that I
14 would ask the Court is to give us a ruling on the earlier
08:12 15 issue that Mr. MacPete raised. There is this UDRP issue
16 where my client has no choice if he wants to keep his
17 accreditation with ICANN to change the registrant
18 information, who owns the names. And apparently there is
19 another process that doesn't involve UDRP where a third
20 party asserts a trademark claim to a name, and my client
21 in that situation also has no choice, and basically this
22 arises out of Judge Lynn's order on Friday that Mr.
23 MacPete's client is concerned that my client would get in
24 there to alter the date to alter the split. They were
25 concerned about alteration of data. Judge Lynn said

08:13 1 nothing is going to be changed, no documents, nothing. At
2 that time that seemed reasonable, but I didn't understand
3 at that time this technical property. So we're asking
4 this Court to enter Judge Lynn's order regarding the 24
5 hour period of time that we have agreed is acceptable with
6 the caveat that would allow my client to keep his
7 accreditation where he hasn't changed a third party.

8 THE COURT: Is Mr. MacPete willing to defend
9 that, defend --

10 MR. RAWLS: Mr. MacPete only raised the UDRP
11 issue where there is an order issued by ICANN afterwards.

12 THE COURT: I understand he has a lawyer, Mr.
13 Herrera, if I remember the name, who's defending all
14 trademark issues. Shouldn't you just give those over to
08:14 15 Mr. MacPete to defend, if I'm understanding you correctly?

16 MR. BELL: Your Honor, I think I can provide a
17 little clarification. There are third parties other than
18 what Mr. Baron is a beneficiary and Mr. Krishan. There
19 are other people that say "You charge too much, too less,
20 We want our domain name." Maybe, like Judge Furgeson.
21 You say, "I don't want Ondova to be my register anymore.
22 GoDaddy.com is offering them for \$2.99. I want you to
23 transfer them." So somebody like your Honor would get on
24 and say "Ondova you are charging too much, We want these
25 domains transferred to Go Daddy." If we don't comply with

08:15 1 your order, we're subjecting ourselves to liability, and
2 oh, by the way, we're subject to losing this ICANN
3 accreditation and to the extent that we're putting Ondova
4 in a precarious position because there is a potential risk
5 that Ondova is going to lose its ICANN accreditation which
6 would result, by the way, in putting the domain names at
7 risk. So we need to act.

8 THE COURT: So you are talking about names that
9 are not owned?

10 THE COURT: Nothing seems simple in this case,
11 but couldn't somebody say this name is not on the list and
12 do what you need do?

13 MR. BELL: Absolutely. We will provide a copy,
14 and they can verify it and triple verify. Whatever. We
08:16 15 need to be able to act in due course, save our ICANN
16 accreditation and say what is consistent with the four
17 corners of that memorandum of understanding.

18 THE COURT: What's the problem with that, Mr.
19 MacPete?

20 MR. MACPETE: I'm not exactly sure what he's
21 proposing, your Honor.

22 THE COURT: Apparently he is saying you don't
23 own it. I come in and I own my domain name and he has
24 registered it, and I say I want to take this to a new
25 registrar. You wouldn't have a problem with that, would

08:16 1 you?

2 MR. MACPETE: I wouldn't, and I think if they
3 showed us a copy of the instruction from the customer to
4 me, there would be no issue. That's fine. Same thing
5 with the UDRP. I don't think the TRO needs to be
6 modified. I think counsel can work on this cooperatively
7 and show me the thing, and if there is an issue because
8 they show me something that I think there is a problem --
9 something untoward going on -- we can approach the Court.

10 THE COURT: But if you don't own it, it can't be
11 under the restraining order.

12 MR. MACPETE: The restraining order is with
13 respect to his entire registrar and the reason for that
14 is, your Honor, the vast majority of the names of the
08:17 15 registrar are ours, but there is a dispute between the
16 parties because Mr. Baron has been asserting he doesn't
17 agree to the list he produced last year. And remember,
18 your Honor, he is the one that maintains this who-is
19 database, which is the record title information for these
20 domain names. The reason I asked Judge Lynn for the order
21 she gave me is because if he changes a name which is
22 currently listed as Manila as the owner and he changes the
23 registrar information to be Tom Jones and he registers Tom
24 Jones at Email.com and sends an e-mail saying transfer
25 this to Go Daddy he can cheat and take names which should

08:18 1 be split off the registrar.

2 THE COURT: But he is going to give you notice
3 and evidence of the request by the third-party owner.

4 MR. MACPETE: I'm fine with that, your Honor.

5 MR. BELL: I want some clarification. Is the
6 burden on them to run down to the courthouse and say no,
7 no, no? Or is the burden on me to come --

8 THE COURT: The burden is on them.

9 MR. BELL: Okay.

10 THE COURT: You give them the notice. I will be
11 here next week, and so I guess, you know, I may see you
12 twenty times next week.

13 MR. MACPETE: You probably won't see us at all.
14 I imagine most of this is not going to be controversial,
08:19 15 and the number is about 500 out of 650,000 names. I'm
16 happy to have this procedure, and I think we understand he
17 is going to give me evidence before they do anything, and
18 if I'm okay, I will tell them that. And if I have a
19 problem, I will see your Honor.

20 THE COURT: Come to me.

21 MR. BELL: There is a couple of things I didn't
22 agree with, but for the most part -- I would ask the Court
23 right now based on it sounds like a total quagmire -- We
24 have been in California court. Mr. MacPete is licensed in
25 California, and so am I. Don't hold that against us.

08:19 1 THE COURT: I like California. Wish they had a
2 better system of governance, but I like California.

3 MR. BELL: We're in a little bit of a quagmire,
4 and I think the best thing to do would be to order us
5 right now -- It sounded like I was quasi-joking, but we
6 need to get into a room and get this knocked out, and
7 we're ready, willing and able to perform in contravention
8 of Mr. MacPete's representation, and I'm not saying he
9 misrepresented. We're ready willing and able to perform.
10 We want the case off the docket. There is a state court
11 motion pending. A motion to enforce in that court and I
12 don't believe, with all due respect to the Court, the
13 state court has jurisdiction on this.

14 THE COURT: They do and I have jurisdiction,
08:20 15 too. So I'll tell you what. I am going to stay in this
16 case through the preliminary injunction, and there is an
17 order entered. Nobody can violate it. Anybody violates
18 it, you are all paying big dollars. Not only corporately
19 but personally also. You want to challenge the court
20 order, I have the marshals behind me. I can come to your
21 house, pick you up, put you in jail. I can seize your
22 property, do anything I need to do to enforce my orders.
23 I'm telling you don't screw with me. You are a fool, a
24 fool, a fool, a fool to screw with a federal judge, and if
25 you don't understand that, I can make you understand it.

08:21 1 I have the force of the Navy, Army, Marines and Navy
2 behind me. There is a lot of playing games. Both sides
3 are probably completely complicit. But it's time to
4 resolve this. If you don't want to resolve it, I can put
5 you in jail. I can hold you six months, twelve months,
6 eighteen months, and I can do that, and if you want me to
7 do it, I will be glad to do it, but you need to be serious
8 about this. There is a problem here that I do not
9 understand. It's really beyond my comprehension, and I
10 actually am not a completely dumb person. So you need to
11 get this resolved.

12 MR. BELL: I have been on the case eight days.
13 So I'm not entirely complicit.

14 THE COURT: Everybody is to blame. When you get
08:22 15 up in the morning look in the mirror. Everybody is to
16 blame here. I'm going to hear you on the 1st, if I have
17 to, but in the meantime, there needs to be two adults, one
18 on each side, that figures this out.

19 MR. BELL: Do you think, your Honor -- I mean I
20 would make an oral motion before the honorable court maybe
21 to order a mediation and get this thing out and off your
22 docket.

23 THE COURT: There is no question that's what
24 needs to be done. Apparently, there is a lot of money to
25 be had here. Let's not be greedy. Let's get this done

08:22 1 and figure it out. I'm not going to order you to do
2 anything. You can do absolutely nothing until you show up
3 on the first. But on the 1st, the door is shut, and
4 everything ends, and I am going to enter orders that
5 nobody may like. It may not be good for anybody. I may
6 actually appoint a receiver and ask the receiver at the
7 expense of all the parties to find a new registrar. I'll
8 order Ondova and Mr. Baron to put every domain he's got in
9 with the new registrar. I'll have the new registrar
10 protect these names, and then we'll just wait for a trial
11 in five or six years and go from there. So you know,
12 there is things I can do. I'm sure the receiver won't
13 cost more than two or three hundred thousand dollars,
14 maybe half a million. But I know you have the money
08:23 15 because these things are valuable.

16 MR. BELL: I think that's the low end.

17 THE COURT: A million dollars. I'm sure there
18 is a good receiver out there that would love to have this.
19 So at any rate, you know -- You know, don't give us what
20 you think is your rightful interests. But I'm telling
21 you, the Court's are going to resolve this. You are not
22 going to resolve ex parte or at a whim. The courts are
23 going to resolve it, and if you don't like what the courts
24 do, we can pick you up on the street and put you in jail.
25 That's the way it works. So it's time to get serious here

08:24 1 and time to understand that once the Court steps in,
2 that's it, and I've got this case, and I'm keeping it. So
3 you want to screw with me, have at it. But I can put you
4 in jail, and I will do it, and I can also take all of your
5 money away from you. I can look at all of your financial
6 statements. I can take every penny you've got if I think
7 you are doing stuff that's unlawful, illegal, fraudulent
8 and whatever. So let's don't test me here. And at the
9 same time if you think you are right, litigate it.
10 Litigate it to the cows come in, but don't screw with the
11 courts.

12 That's where we are, Mr. Bell. You don't have
13 to do anything this weekend. You can play all next week,
14 but on the 1st something is going to happen.

08:25 15 MR. BELL: If I may.

16 THE COURT: Sure.

17 MR. BELL: How much time do we have for the
18 preliminary injunction hearing?

19 THE COURT: A day.

20 MR. BELL: Right now, unless we can get this
21 thing resolved which is my intention, I think Mr. MacPete
22 would agree we can bang it out over the weekend. I have
23 just gotten on the case. My client is going to appear. I
24 would ask that you order the plaintiff, especially Mr.
25 Munish, to appear as well.

08:26 1 THE COURT: It would be a mistake not to appear.
2 People don't want to appear, that is fine. But I don't
3 hear their testimony, I don't hear their side of the
4 story, their chance of winning gets diminished greatly.

5 MR. BELL: I just want to make sure that Mr.
6 Krishan is going to be here, and I'm worried my subpoena
7 is going to be ineffective.

8 THE COURT: If you have a subpoena that you have
9 served for people to be here on the 1st, I'll send the
10 Army out.

11 You guys are spending lots of money that you
12 might be able to use in a more profitable way.

13 MR. BELL: I agree. I'm trying to bang
14 everybody over the head. I think Mr. MacPete is, too. We
08:26 15 want to bang this out. We really do. In good faith,
16 trying to work it out and get this case done without
17 judicial intervention.

18 THE COURT: Just remember this is not a
19 self-help problem. This is a court problem, a lawsuit
20 problem. So anybody decides they can go and help
21 themselves to some remedy, you have a problem, come to
22 court. No self-help. Somebody doing something because
23 there is a problem, I'm here. I'll be here all next week
24 if there is a problem. If somebody needs money to pay for
25 these things, whatever, whatever, let's work it out.

08:27 1 MR. BELL: I agree, your Honor.

2 THE COURT: You know for grown people -- I guess
3 this is what happens when money is at stake. People
4 completely lose their understanding of how things are to
5 operate, but you can't do that, and just so everybody
6 understands where we are, understands what my authority
7 is, my authority is to make sure we have the rule of law
8 in effect, and that means people just can't go start doing
9 things they want to do regardless of contracts or
10 agreements or court orders or whatever. That's for both
11 sides.

12 Okay, Mr. Bell, sounds like you are ready to do
13 something constructive.

14 MR. BELL: I'm going to do my best.

08:28 15 THE COURT: Now, I am going to enter an order or
16 you guys can prepare me a order placing -- not the
17 defendant's motion to dismiss. That will not be put under
18 seal. But all attachments to the motion to dismiss will
19 be put under seal.

20 MR. MACPETE: Thank you, your Honor.

21 MR. BELL: Your Honor, did you say the
22 defendants were responsible for that order?

23 THE COURT: Work it out. Get Mr. MacPete to
24 prepare it and approve it to you and send it to me. He
25 can e-mail it to Mr. Frye, and he'll copy it off, and I'll

08:29 1 sign it.

2 THE COURT: Mr. MacPete.

3 MR. MACPETE: As I told you yesterday on the
4 phone, these lawyers are not the problem, and I appreciate
5 Mr. Bell's representations to the Court that he wants to
6 work with counsel and he wants to get something resolved
7 without the necessity of the Court intervening. With all
8 due respect to Mr. Bell, this is the seventh set of
9 attorneys in this case for Mr. Baron.

10 THE COURT: That's fine. But I'm the judge now,
11 and you are under my jurisdiction, and it's just a fool
12 that decides they are going to ignore a federal judge.
13 There are about 650 of us around the country, and you
14 can't hide.

08:29 15 So let's work this out. Make sure the property
16 is protected, and nobody has to resolve anything. I'll be
17 glad to do it.

18 MR. MACPETE: We appreciate that, your Honor.
19 With respect to the state court because I want the court
20 to have the full picture of sort of what's been going on
21 post-settlement, there have been three TRO proceedings
22 which were brought by Mr. Baron and Ondova in the
23 underlying state court case. All three of those TRO's
24 were denied. In fact, at the temporary injunction hearing
25 which was held about two Fridays ago, his Honor Judge

08:30 1 Hoffman in the state court indicated that he thought the
2 TRO's being brought by Mr. Baron were inappropriate
3 procedures, and it was his view that probably the proper
4 thing to happen is for his case to be dismissed and
5 everybody to come here in the one court that had a
6 pleading seeking to enforce the settlement agreement and
7 get it done here. That was what Judge Hoffman said in the
8 state court. They are correct that the U.S. Virgin Island
9 parties have subsequently filed a motion to enforce the
10 settlement agreement in state court. With all due respect
11 to those parties, that is an inappropriate procedure
12 under Texas law. It's clear you cannot file a motion to
13 enforce and have the court decide that in some kind of a
14 summary fashion. You have to file a new lawsuit for
08:31 15 breach of the settlement agreement. They are the
16 plaintiffs in the state court, and Mr. Baron and Ondova
17 have not filed a new complaint, even asserting -- an
18 amended complaint even asserting a breach of the
19 settlement agreement or asking for a declaratory judgment
20 with respect to the settlement agreement or anything like
21 that.

22 THE COURT: Do I not have all the parties at
23 stake in this case?

24 MR. MACPETE: There are the U.S. Virgin Island
25 parties who are parties to the settlement agreement, and

08:31 1 it's my understanding that they are currently
2 contemplating whether they are going to intervene in this
3 lawsuit.

4 THE COURT: Why didn't you bring them in
5 initially?

6 MR. MACPETE: To be honest with you, your Honor,
7 I didn't know how to do that. They haven't breached the
8 settlement agreement. They have been performing, and so I
9 didn't know how procedurally to get them in because we're
10 obviously the plaintiff because we're being aggrieved by
11 the breach that we allege the defendants have engaged in,
12 and they are not a defendant because they are not in
13 breach, and I don't represent them. So I didn't really
14 know what to do.

08:32 15 THE COURT: Well, you are in touch with their
16 lawyers, right?

17 MR. MACPETE: I am, and that's how I know that
18 they are currently contemplating intervening in this
19 particular matter to essentially protect their interests.

20 THE COURT: Well, they should be encouraged to
21 do so.

22 MR. MACPETE: I have. Because obviously they
23 have the same interest we do in having the settlement
24 agreement enforced, and I know their client would like for
25 the underlying litigation to be dismissed, and it hasn't

08:32 1 happened yet because the state court under the settlement
2 agreement has to be able to sign that order against
3 VeriSign to transfer the domain names, but I know the U.S.
4 Virgin Island client is very interested in seeing that
5 litigation dismissed.

6 THE COURT: That's fine. Anything else from
7 you?

8 MR. MACPETE: Actually we have given you a lot
9 of background, and I know you are pressed for time. You
10 said you had an engagement at 9:30. But we haven't talked
11 about the discovery problems. Can we come back a little
12 later today?

13 THE COURT: No, let's go straight through.

14 MR. MACPETE: I appreciate that.

08:33 15 MR. BELL: I have a hearing in another court by
16 eleven.

17 THE COURT: I think I can knock out the
18 discovery problems very quickly.

19 MR. BELL: Your Honor, may I approach for one
20 housecleaning issue?

21 THE COURT: Why don't you and Mr. MacPete both
22 approach, and we can with talk about discovery.

23 MR. BELL: I have one housekeeping issue I
24 wanted to discuss before we get into the merits of the
25 issue.

08:39 1 THE COURT: That would be fine.

2 MR. BELL: With respect to the plaintiff's TRO,
3 I don't have an issue with it. The application or
4 anything. But under the Federal Rules, there are three
5 plaintiffs, and there is a verification that I think is in
6 Manilla's file, and the plaintiff who brought the TRO is
7 Munish Krishan individually, and I don't have a
8 verification from him, and I'd like the Court to order him
9 -- The TRO is brought on his behalf -- order him to
10 verify his pleadings under oath in accordance with the
11 Federal Rules of Civil Procedure to the extent the Court
12 would accommodate my question.

13 THE COURT: Okay. Thank you.

14 MR. MACPETE: Your Honor, I don't think that's
08:39 15 necessary. We submitted sufficient evidence with our
16 motion, and obviously if that evidence is insufficient,
17 the court is going to rule against our motion on July 1st,
18 but I don't think Mr. Bell gets to dictate who my
19 witnesses are going to be or how I present my evidence.

20 THE COURT: He's talking about a verified
21 complaint?

22 MR. MACPETE: We don't have a verified
23 complaint. I'm not even sure what he's talking about in
24 terms of verification.

25 THE COURT: Cite me the federal rule that says

08:40 1 an application for TRO --

2 MR. BELL: I think --

3 THE COURT: I'm surprised we're having this
4 problem.

5 MR. BELL: I have it here. Number 7 in O'Connor
6 on I think it's Page 80.

7 THE COURT: "TRO must be accompanied by verified
8 affidavit or complaint." I take it Mr. MacPete, you say
9 that you have filed a declaration under penalty of
10 perjury?

11 MR. MACPETE: Yes. And what Mr. Bell's problem
12 is he wants to dictate who my witness is. If my witness
13 was Mr. Munish Krishan and he provided the affidavit and
14 complaint that shows -- What he wants to do is say Mr.

08:42 15 Krishan has to be the declarant, and there is no
16 requirement, and I think it's inappropriate for him to try
17 to dictate who my witnesses are.

18 THE COURT: It doesn't say that it must be by an
19 affidavit or verified complaint as to all parties.

20 MR. BELL: That's true. But there is different
21 parties. I think Munish is the corporate rep for Manila
22 and Netsphere. He can't possibly testify in a TRO
23 personal knowledge of what Munish Krishan is alleging and
24 Munish Krishan is one of the movant's in this TRO who has
25 personal knowledge of what's been the four corners of this

08:43 1 TRO.

2 THE COURT: Well, let me do this. You file by
3 Monday -- You file a motion to strike or whatever motion
4 you want and show me in the complaint what must be
5 verified by the other party, and I'll look at it on the
6 pleadings. Here you go, Kevin. Give me a written motion
7 with authority with what you think is not appropriately
8 covered in the TRO. Then I will take it from there.

9 THE COURT: Okay. Mr. MacPete.

10 MR. MACPETE: One thing Mr. Bell said which I
11 think we needed to clear up with the Court had to do with
12 Ondova, and you remember that he was suggesting to the
13 Court that Ondova was just the registrar and Mr. Baron is
14 the beneficial owner of these domain names and Mr. Krishan
08:44 15 is the beneficial owner of these domain names. And with
16 all due respect to Mr. Bell, the issue of who the actual
17 owner is prior to the settlement agreement actually being
18 performed is a highly contested issue or it was in the
19 underlying cases. For instance, your Honor, in the fifth
20 amended petition which was filed in the underlying state
21 case, Ondova, not Mr. Baron, took the position that Ondova
22 was the owner of the entire portfolio. So with all due
23 respect to Mr. Bell, if you listen to the plaintiffs in
24 this case, your Honor, they will tell you that prior to
25 the settlement agreement they owned the whole portfolio.

08:45 1 If you listen to Mr. Baron, he would tell you that Munish
2 owns half of it, and I own half of it, and if you talk to
3 Mr. Baron at other times will he would say Ondova owns the
4 whole thing. It's a hotly contested here. So the issue
5 of the registrar being a third party is not a complete
6 picture, your Honor.

7 THE COURT: Of course, I don't understand this
8 process. You know, when I talk about ownership of
9 property it means that somebody has their name on the
10 property. Apparently it's not that simple.

11 MR. MACPETE: Well, it's not that simple here,
12 your Honor, because of the self-help that occurred in the
13 underlying case. If you looked at what the recorded title
14 to the domain names was on November 12, 2006 record title
08:46 15 to the domain names at issue was in Manila Industries,
16 Inc. and during the underlying litigation, Mr. Baron on
17 his own, went into his database records and changed the
18 record titleholder on all of our domain names or most of
19 them to set up the company he set up with somebody, called
20 TIPPA, Texas International Property Associates.

21 THE COURT: I guess this is a paper trail, and I
22 can see all of it, and I can hear Mr. Baron's explanation
23 for what authority he had to do what he did.

24 MR. MACPETE: Well, the difficulty with that,
25 your Honor, is unfortunately there is not a good audit

08:46 1 trail because the registrar is the only one that has the
2 records, and there is not sort of an historical
3 independent database that has this, and that's part of the
4 reason why we asked Judge Lynn not to change this who-is
5 information because he can disguise what happened, because
6 he's the only one who has these records. I don't want to
7 delve too much.

8 THE COURT: I take it that you all believe that
9 he won't violate a court order.

10 MR. MACPETE: I believe your Honor has made it
11 clear what the consequence would be if he were to violate
12 this Court's order.

13 MR. MACPETE: And I'm comfortable that we're
14 protected at the moment. That being said, let's get to
08:47 15 the discovery problem we're having. At the TRO hearing --
16 The final one in front of Judge Lynn because we did three
17 telephone conferences at the end of day. At the final
18 one, Judge Lynn granted the TRO, and she was asked by Mr.
19 Bell to permit -- Mr. Bell asked the Court to order that
20 he get depositions of my three clients on three days'
21 notice and that he get document requests responded to on a
22 three-day notice for those three depositions. And Judge
23 Lynn granted that request, and she made it mutual and
24 indicated I would have the right to take the deposition of
25 Mr. Baron individually and Ondova's corporate

08:48 1 representative on three days' notice and to have document
2 requests responded to on three days' notice. And the
3 discovery period was due to start Monday of this week at
4 8:00 a.m.

5 THE COURT: But the problem I understand is the
6 document request.

7 MR. MACPETE: That is the problem. So on Monday
8 at 8:00 a.m., I got deposition notices at the same time I
9 served deposition notices and document requests. And the
10 document requests I got from the defendant were 267
11 requests long, and as I think your Honor characterized on
12 the telephone yesterday that was more of a blunderbuss
13 than a rifle shot. The document requests I served were
14 14. And I understood when we were talking about expedited
08:49 15 discovery that we needed a rifle shot, that there is a
16 limit of what people were to turn around in three days.
17 So I asked very specifically for the documents which I
18 thought I would need to prepare for the preliminary
19 injunction, and then I got on the phone with Mr. Rawls,
20 and we had a very frank discussion, very cooperative
21 discussion, on Monday about what specific documents I
22 thought I needed because I was aware that they are
23 relatively new to the case and he may not have been
24 familiar with the various sources of documents that fell
25 within the categories I asked for.

08:49 1 At that time I also invited him to tell me
2 specifically what documents he thought he needed, and I
3 was very clear. I said the Court was clear. You are
4 going to get discovery. You are entitled to discovery,
5 and you were not going to get jammed in preparing for the
6 preliminary injunction. So I will give you the documents
7 that you need, but you need to tell me what they are.
8 Because with 267 requests, most of them were outside the
9 scope of the discovery that Judge Lynn ordered. I said I
10 need some guidance from you. He said okay. I'm not sure
11 what I am going to need yet and could I have an idea of
12 what you think is going to be relevant, and I said yes, I
13 do. And he asked me at that time if I would send him an
14 e-mail the next day which listed the documents I was going
08:50 15 to voluntarily produce which I thought were relevant to
16 their defense of the preliminary injunction. I did that
17 and had 14 categories of documents which I said I was
18 going to be producing which I thought were relevant and I
19 invited him in that e-mail to send me a response that says
20 if there were any other documents which I hadn't
21 identified -- and I certainly wasn't going to represent
22 that I had got everything that he might think was
23 relevant -- that I was willing to produce those things
24 within the scope of discovery if he would just identify.

25 On Tuesday, we had several conversations, but he

08:51 1 was not able to respond to that request for anything
2 further he needed, and then on Wednesday we probably spent
3 most of the day together trying to work out various
4 agreements on the order of discovery and that sort of
5 thing, but he was still unable to tell me what documents
6 he needed besides the ones I identified I was going to
7 produce.

8 THE COURT: And so you still haven't resolved
9 the issue, and they still want 267 documents.

10 MR. MACPETE: That's not even really the
11 documents. We get to the deposition at ten o'clock. His
12 client is supposed to sit for a deposition and my client
13 is supposed to sit for a deposition. We agreed that we
14 would sit down prior to those depositions starting and
08:51 15 talk about where we are in terms of document production,
16 and at that time he was still not able to tell me that he
17 had a need for anything I had already produced.

18 THE COURT: So there has been some limited
19 production by both sides?

20 MR. MACPETE: We haven't exchanged, but we have
21 told each other what we have and are ready to produce. So
22 he told me what he wasn't going to produce. And I'll get
23 to that in a minute because that's what I need your help
24 on.

25 After that meeting which probably took an hour,

08:52 1 hour and a half, the defendants and their client went away
2 and stayed in the room for about two or three hours
3 working on any other documents that they thought they were
4 going to need. Essentially, what I had been asking them
5 to do for the past three days, and they came up with a
6 list, your Honor, between them and their client after
7 spending hours of our deposition time doing what should
8 have been done days earlier and said these are the things
9 we think we need that weren't on your list Tuesday, Mr.
10 MacPete.

11 And after we got together and talked about it,
12 there are ten items on this list and counsel amongst
13 ourselves agreed that four of them weren't relevant and
14 that one of them didn't have any documents that would be
08:53 15 responsive. One of them I had already agreed I was
16 actually going to produce. And then the other two
17 basically were things which I was willing to produce but
18 were back in California because my people have flown here
19 to comply with the Court's order to give depositions on
20 Thursday. And so I would get it to them as quickly as I
21 could, but I was hamstrung, given they hadn't responded
22 and asked for this earlier in the week.

23 So that's where we are I think with respect to
24 the documents they need from me. I think we have pretty
25 much agreed that I am providing the documents I said I was

08:53 1 going to provide them, and I will give them the other
2 documents they asked for as soon as I can get somebody in
3 California to prepare it.

4 So turning to the document request that I sent
5 to Mr. Baron, the first problem that we have is we had
6 document requests that specifically asked for the
7 financial information related to Mr. Baron individually,
8 and as we just got done talking about, your Honor, it's
9 all over the map about who in the underlying case was the
10 owner of these domain names. So when Mr. Bell says it
11 should be the registrant that pays this instead of the
12 registrar. Well it's not clear who the registrant is.
13 It's not been performed. Then we will know. But before
14 that, all you have is different allegations in the
08:54 15 underlying litigation and no clarity on who's actually,
16 quote, the owner. So ultimately the registrar -- who's
17 one of the underlying claimants saying they own the whole
18 thing -- is the person that gets the bill from VeriSign
19 and ICANN, and the settlement doesn't say anything other
20 than the registrar paying the expenses, but they have
21 alleged it's supposed to be Mr. Baron and Mr. Krishan.
22 And as I read to the Court yesterday on the phone the
23 portion of the transcript in front of Judge Lynn in which
24 Mr. Bell represented in his view the registrant, the
25 people paying the fees are Mr. Baron and Mr. Krishan.

08:55 1 That being said, it made sense for me obviously to send
2 the document requests I did saying give me the personal
3 financial information of Mr. Baron because Mr. Baron has
4 claimed in the underlying litigation that he is the owner
5 of the domain names, and his counsel has represented to
6 Judge Lynn that he is one of the people who's supposed to
7 be paying for them.

8 And in fact, as I told your Honor, Mr. Baron and
9 Ondova were paid over 5.6 million dollars during the
10 pendancy of the underlying litigation. So when he comes
11 to this Court and says Ondova cannot pay for these domain
12 names and it's going bankrupt and domain names are going
13 to be lost, the veracity of that statement needs to be
14 tested. And in our complaint, your Honor --

08:56 15 THE COURT: Mr. Bell is taking the position that
16 Mr. Krishan is the owner and Mr. Baron is the owner.

17 MR. MACPETE: That's correct, your Honor.
18 That's what he told Judge Lynn. It's on Page 17 of the
19 transcript from the TRO hearing. And he indicated that --
20 He said it's on the registrant's side which is Mr.
21 MacPete's clients and Mr. Baron, the beneficial owners, to
22 pay for the registration fees. That's what he represented
23 to Judge Lynn. That's what his client was telling him
24 last Friday. I understand that his client is now telling
25 him something different and we're going to hear some kind

08:57 1 of a retreat from what was represented to Judge Lynn.

2 MR. BELL: Your Honor, I need to fall on my
3 sword. Last Friday I was almost as confused as you are.
4 Just to clarify, Baron individually -- Jeff Baron
5 individually has never claimed ownership of the domains.
6 Ondova has because it is like the noteholder -- If I own a
7 house and I have a mortgage on it and I don't pay it, the
8 noteholder has what right to foreclose on the home. Same
9 deal here. The registrants weren't paying for the renewal
10 fees, and so one of Ondova's contentions in the underlying
11 state litigation was if you don't pay the registration
12 fees we get to foreclose on your domain names, and that's
13 part of the contract, and I can put that before the Court.
14 Did I misstate something to Judge Lynn? Yes, your Honor,
08:58 15 I did and I was just getting all the facts last week. But
16 did I say he was a beneficial owner? The answer is, yes,
17 but I made a mistake. For that I'm sorry. It was not
18 intentional, registrant, registrars, everything was
19 confusing to me. And I probably misspoke, and I think
20 additionally Mr. MacPete can attest that we sounded alike
21 and talked over each other in that hearing, and we had a
22 little bit of an issue with respect to the court reporter.
23 But Mr. Baron has never personally or individually taken
24 the position that he owns the domains personally. I
25 understand that he's about to make the argument alter ego.

08:59 1 It's in his complaint. He's talking about corporate
2 minutes and corporate books. I'm a speaker at one of the
3 Advance CLE Seminars on corporations, and nowhere in the
4 Code does it talk about an LLC having to maintain
5 corporate books and records, and in fact, that's one of
6 the precise reasons why the legislature adopted the
7 Uniform Limited Liability Company Act. So their blanket
8 allegation to try and pierce a corporate veil, alter ego,
9 whatever the case may be, is a little bit disingenuous.
10 You need to lay the proper predicate and prove that up,
11 but at this point in time Jeff Baron has never claimed
12 interest in the domain names. The analogy would be a
13 lender did take an interest in the domain names, just for
14 clarification.

09:00 15 THE COURT: Okay. Let me look at the prayer
16 here. You've asked that we proceed -- that I proceed with
17 the division of the domain names using the methodology set
18 forth in the settlement agreement, execute and submit to
19 the Court an agreed order where the Court will instruct
20 VeriSign to effect the transfer of the shared Manila
21 domain names to a registrar designated by Manila.
22 Otherwise, comply with the terms of the settlement
23 agreement, impose a constructive trust for the benefit of
24 the Netsphere parties over all revenue generated by the
25 defendant through their unlawful conversion, granting

09:01 1 Netsphere parties all relief. So you are here to enforce
2 the settlement agreement, correct?

3 MR. MACPETE: That's correct, your Honor. The
4 reason the financial issue is relevant, remember the TRO
5 and preliminary injunction related to deleting domain
6 names, and there was an absolute representation to the
7 Court -- represented to Judge Lynn and your Honor here --
8 that Ondova doesn't have money and Ondova can't pay for
9 these domain names, and that's why Ondova should not be
10 allowed to delete domain names and that's an issue they
11 put in issue. It's not true, your Honor. He got 5.6
12 million dollars during the underlying litigation, and he
13 has the money to pay for the renewals. They are not
14 shooting straight with the court when they say Ondova is
09:01 15 bankrupt and can't pay.

16 THE COURT: Well, let me ask you this. Mr. Bell
17 says that under the agreement between Netsphere and Ondova
18 you have to pay for the renewals of these domain names,
19 your client.

20 MR. MACPETE: We don't have an agreement with
21 Ondova, your Honor.

22 THE COURT: Who do you have an agreement with?

23 MR. MACPETE: We don't.

24 THE COURT: When you sign up with the registrar
25 there is no agreement?

09:02 1 MR. MACPETE: There was originally a
2 registration agreement with Mr. Baron pre-underlying
3 litigation.

4 MR. BELL: I'm sorry. You can go right now on
5 Budgetnames.com. The agreement is actually on line if you
6 would like to look at it.

7 MR. MACPETE: That's actually not the agreement
8 we had because we had a specially --

9 THE COURT: When you signed up with somebody to
10 register your domain names, there must have been a
11 contract then, correct?

12 MR. MACPETE: There was a contract then,
13 correct.

14 THE COURT: And that was between Netsphere and
09:03 15 Ondova?

16 MR. MACPETE: No, actually it was between Manila
17 and Ondova. And that was pre-underlying litigation. So
18 pre the last two and a half years in which we haven't had
19 control or record title to our domain names.

20 THE COURT: At some point that agreement was
21 vitiated.

22 MR. MACPETE: I think essentially by Mr. Baron
23 when he took the domains in self-help back in November of
24 2006.

25 THE COURT: Well, I don't know if there was an

09:03 1 underlying contract and assuming for the moment that you
2 are correct that Ondova Limited Company breached that
3 contract, that doesn't vitiate the contract. It means
4 he's liable for damages. The problem is the settlement
5 agreement hasn't been complied with.

6 MR. MACPETE: That's true, your Honor. What
7 we're talking about is whether or not Ondova as the
8 registrar who gets the bill from VeriSign and ICANN
9 actually has the resources to pay for those domain names,
10 and Mr. Bell preempted me because I was going to direct
11 your Honor to Paragraph 12 of our complaint.

12 THE COURT: Okay.

13 MR. MACPETE: As he told you, we allege in
14 Paragraph 12 of the complaint that Mr. Baron is the alter
09:04 15 ego of Ondova and liable for the acts of Ondova.

16 "Recognition of privilege of separate existence would
17 promote an injustice and gravitate against the plaintiff
18 because Mr. Baron has dominated and controlled Ondova as
19 follows:" And then we go into a number of different acts,
20 only one of which is he hasn't adhered to the proper
21 corporate formalities for Ondova. He has used the funds
22 of Ondova for personal things and a number of other
23 things. The one thing I do agree with what Mr. Bell says
24 is I have properly alleged it, and I am entitled to get
25 discovery about this particular issue, and Mr. Baron has

09:05 1 decided on his own -- And so this is not counsel's
2 problem. Mr. Baron has decided on his own that he doesn't
3 have to produce the financial documents which I asked for
4 under expedited discovery order from Judge Lynn because in
5 his personal opinion they are not relevant because he
6 doesn't think he's personally liable for paying those
7 domain name expenses. That's a hotly contested issue, and
8 I'm entitled to discovery on it, and Mr. Baron's judgment
9 about what is relevant is, with all due respect, not
10 relevant here. That's the first issue we're having is his
11 refusal to turn over to counsel and ultimately to me the
12 personal financial documents which I have requested, and
13 obviously that's going to include the wire transfer
14 receipts and everything else on this 5.6 million, plus his
09:06 15 other assets, which are going to demonstrate to the Court
16 that the representation he asked his counsel to make that
17 he and Ondova are unable to pay the renewal fees are
18 false.

19 MR. BELL: Your Honor, if I may respond. In the
20 complaint it says Baron is the President and Chief
21 Executive Officer of Ondova. Mr. MacPete made the
22 representation this is only one issue with respect to
23 referring to corporations versus LLC's. First of all,
24 there are no officers and no directors of an LLC. There
25 are members and managers.

09:07 1 Now, with respect to B, he also represented to
2 the Court in all the three years of litigation or four
3 years and millions of dollars spent with Locke Lidell and
4 Sapp that no discovery was taken. Now, how does he know
5 that Baron has commingled funds and other assets as a
6 convenience to assist in evading obligations of Ondova?
7 Ondova is a separate entity and Texas law recognizes that.

8 And C, he says Baron has failed to adhere to
9 corporate formalities for Ondova. Last I checked State of
10 Texas created this hybrid of LLC precisely for the reason
11 that LLC does not have to comply with corporate
12 formalities. That's one of the main reasons to get around
13 from the piercing the corporate veil standard that Mr.
14 MacPete is alleging. That's one of the issues. He made a
09:08 15 representation to the Court there was only one.

16 Here is Number 3. Maintain minutes and/or
17 adequate records. That's not part of the Texas Business
18 and Organizations Code.

19 D, Baron diverted funds or other assets to
20 Ondova. Well, if there is no discovery taken despite the
21 millions of dollars in legal fees, how can you make that
22 blanket allegation?

23 MR. MACPETE: I'll be happy to tell you that,
24 your Honor. Mr. Baron has domain names of his own. He
25 licensed those domain names to my client Netsphere in the

09:08 1 underlying litigation. For a long time he refused to
2 actually take delivery, if you will, of the money he was
3 owed under the licensing agreement by Netsphere, and what
4 he does is used Netsphere CFO as his personal paymaster,
5 and he asked her to pay personal expenses on his behalf
6 out of the money that was supposed to be paid to Ondova on
7 its domain name. So on that, I am going to have to find
8 out what other things he has done in terms of using the
9 company money for his personal expenses, but I already
10 have evidence under my control that that behavior was
11 going on.

12 MR. BELL: I made the representation that Ondova
13 is in the red. And basically what they are trying to do,
14 it's a red herring and straw man argument put together,
09:09 15 and what they are essentially trying to do is -- It would
16 be like your Honor having a corporation, and your wife and
17 you individually. You having a corporation or LLC.
18 Basically what he's trying to do is force you and your
19 wife to make a capital contribution to the entity to float
20 expenses or get a bridge loan which Ondova has done at
21 usurious interest rates to keep this thing afloat, and the
22 evidence will show that. But to go beyond -- It would be
23 like asking for your financial records to force you to
24 make a capital contribution to you and your wife's
25 entities, and that's not appropriate, your Honor. I don't

09:10 1 have an affirmative pleading other than the motion to
2 dismiss. The representation I made to the Court is Ondova
3 is in the red and on the verge of bankruptcy. And it's
4 completely different from that of the plaintiffs, and Mr.
5 MacPete will talk about this in a second. He's going to
6 refuse to produce Mr. Krishan's personal financial
7 records. Is that still your position?

8 MR. MACPETE: Of course, it's still my position.

9 MR. BELL: Your Honor, may I approach?

10 THE COURT: Let me talk to you for a minute.
11 For the purposes of this enforcement of the settlement
12 agreement, just for the purposes of enforcement, explain
13 to me why we need this information, Mr. MacPete, for the
14 purposes of the preliminary injunction. I realize that he
09:11 15 said he didn't have the money. But as I understand it --
16 And Mr. Bell may be wrong here. But I remember Mr. Bell
17 saying any renewal fees have to be paid not by the
18 registrar but by the owner.

19 MR. MACPETE: That's right and in the underlying
20 litigation, your Honor, Mr. Baron personally claimed that
21 he was the owner, and he also claimed on behalf of the
22 corporation Ondova, whatever we're calling it, that Ondova
23 was the owner. So he had two essentially inconsistent
24 positions in the underlying litigation. But one of those
25 positions was that he was the owner of 50 per cent of the

09:12 1 portfolio. He, Mr. Baron, not Ondova. And what he's been
2 doing here is hiding behind the corporate entity while he
3 essentially has been running everything. As Mr. Bell
4 represented -- And I guess this was wrong when he said it.
5 Mr. Baron is the President of Ondova and I guess there are
6 no presidents of LLC's. So I guess that was wrong. But
7 I'm going off of what he has represented to the Court and
8 what's been represented in the underlying litigation.

9 THE COURT: I'm almost to saying there is no
10 exchange of documents, zip, zero. So we're not going to
11 do the financial statements right now. You can ask him
12 all of those questions. Neither side gets the financial
13 statements. What else?

14 MR. MACPETE: Then, your Honor, there is another
09:12 15 category of documents, and this has to do with the
16 database which is maintained by the registrar of the
17 record title, and that's information which he is required
18 to maintain. It's actually public record. So by ICANN
19 Rules you have to be able to go in and put in the domain
20 name and pull up that information. And he's required
21 every week to electronically send a file to a third-party
22 escrow company. So if there was an earthquake or fire or
23 something happened to his computers, that information is
24 backed up somewhere else. It's publicly available
25 information, and it's information which he has to

09:13 1 specifically ask for. Mr. Rawls represented to me that he
2 was not able to produce that information in time for his
3 deposition. And there has been different representations
4 by different counsel about whether he actually had the
5 information. So counsel prior to Mr. Rawls represented he
6 didn't have that information and was unable to produce it.
7 That story has now changed, but nevertheless I didn't have
8 the information to be able to take his deposition
9 yesterday, and that information is critical in figuring
10 out the problems with the list that had been alleged by
11 Mr. Baron in actually coming up with an appropriate list,
12 if you will. If we go back to kind of the fundamental
13 problem of we've got a pile of domain names and under the
14 settlement agreement they need to be divided, you heard,
09:14 15 your Honor, earlier in this hearing there are three basic
16 categories of names on his registrar. There are a small
17 number -- probably 300 or less -- people unaffiliated with
18 the parties here who happened to register a domain name at
19 his registrar. Then about 3,00 he registered before he
20 ever met us.

21 THE COURT: Excuse me. It seems the great
22 problem we have here is getting some concurrence on what
23 is in the portfolio.

24 MR. MACPETE: That's right, your Honor.

25 MR. MACPETE: And to figure that out, we have to

09:15 1 have this who-is information. That's basically where I
2 was heading. We needed to have this who-is information
3 because that will then allow the counsel at least to weed
4 out the small number of clients who are third-party
5 clients and not part of this dispute at all. Because
6 obviously those names should not be split or transferred
7 anywhere because they don't belong to any of the parties.

8 THE COURT: Well, my view is anything that
9 relates to identifying the correct portfolio is subject to
10 discovery. Why wouldn't that be the case, Mr. Rawls?

11 MR. RAWLS: My client has some amount of his own
12 customers which he doesn't want his opponents to get their
13 hands on.

14 THE COURT: The lawyers have a confidentiality
09:15 15 agreement. That would be between the lawyers.

16 MR. BELL: As long as it's mutual. They've got
17 14 employees; we've got one. I think they've got better
18 access to this information, a lot of this information than
19 we do. Oh, by the way, they made the representation to
20 the Court, your Honor, that they were the original
21 registrant. So they should have this information.

22 THE COURT: So you want me to enter an order
23 saying we're going with their list and they will put it in
24 numerical order, and that's fine with you guys.

25 MR. BELL: No, I don't think --

09:16 1 MR. MACPETE: We would be happy with that.
2 That's a matter of the relief we asked for on preliminary
3 injunction, but if we could have it by agreement that
4 would be great.

5 THE COURT: Give them anything that relates to
6 what is in the portfolio is discoverable.

7 MR. BELL: I agree. As long as it's subject
8 to -- There is an issue with respect to violating federal
9 laws and state federal criminal laws and state criminal
10 laws.

11 THE COURT: You have a confidentiality order
12 signed by the Court. You ought to be safe. And you
13 shouldn't be violating any laws, and that would be
14 entitled to highly confidential designation, eyes only,
09:17 15 for the lawyers.

16 MR. BELL: Very good.

17 MR. RAWLS: Your Honor, the who-is information
18 that Mr. MacPete is asking about, I want to make sure --
19 And I think the Court is on the perfect right track as far
20 as helping us figure out what the portfolio is. That has
21 been the deal breaker for this deal. This memorandum
22 doesn't define it. So everything has broken down from
23 there. But I do want to have some better direction about
24 exactly what my client is going to have to produce in this
25 expedited manner. My client has represented to me that

09:17 1 the business Ondova which we will represent he is not the
2 alter ego of used to have employees, programmers,
3 administrators, office space. The litigation has put so
4 much pressure on the business it has one employee, and
5 that's Mr. Baron, and apparently the document situation is
6 very unwieldy. And "chaos" might be the better term. At
7 least, that's what's represented to me.

8 THE COURT: How is Mr. Baron making these
9 decisions about what is and what is not in the portfolio?

10 MR. RAWLS: I know he has had some assistance
11 from a potential business partner who was in Texas for a
12 while and no longer around.

13 THE COURT: Well, surely the registrar has some
14 obligation here. Declare bankruptcy. You know, I'm
09:18 15 looking at this like a trustee. A trustee is taken under
16 certain obligations to maintain and protect property. I
17 would think the registrar is something like a trustee. It
18 has to maintain and protect property. If it can't do
19 that, unless it fails to do so, it needs to find somebody
20 else to do this. You know these are important things. So
21 I mean it's kind of alarming that you have a registrar
22 whose obligation is to register and protect and renew this
23 property. They don't even know what the property is.

24 MR. BELL: Your Honor, real quick. If Ondova
25 was getting paid, we would be able to do it. Ondova is

09:19 1 not getting paid to do the registrar thing.

2 MR. MACPETE: 5.6 million dollars during the
3 underlying --

4 THE COURT: If we have money problems, I can
5 solve those. I can have Mr. Baron and Mr. Krishan put in
6 \$25,000 a piece into the registry. I don't know what the
7 money problems are. \$50,000 a piece. They are parties
8 here so I can have them put in all the money I need to,
9 \$100,000 a piece into your --

10 MR. BELL: The registry of the Court?

11 THE COURT: No, into your funds.

12 MR. MACPETE: Your Honor, there is an easy way
13 to solve the money problem, and it's provided in the
14 settlement agreement. These names are out there now
09:20 15 making money, maybe not much under Mr. Baron's control.
16 But under the settlement agreement, that money is supposed
17 to be divided between the parties fifty-fifty and that
18 hasn't been done.

19 THE COURT: Who is getting it?

20 MR. MACPETE: A third-party monetization
21 company, and that money has not been able to be dispersed
22 because the defendants are refusing to issue the
23 instruction to Hit Farm to give half to them and a half to
24 us, and then there is other companies making money off
25 these names by Mr. Baron. He is -- We don't know what has

09:20 1 happened to that money.

2 THE COURT: How much money do I need right now
3 to get this done? How much money?

4 MR. MACPETE: The answer is, your Honor, nobody
5 knows.

6 THE COURT: \$100,000, \$200,000?

7 MR. MACPETE: We don't know.

8 THE COURT: Half a million dollars?

9 MR. MACPETE: What we suggest is you issue an
10 order that the defendants direct the monetization company
11 who are monetizing or who are monetizing the names to
12 interplead the funds into this Court, and the Court will
13 have the money that's supposed to be divided under the
14 settlement agreement, and the parties can come in and talk
09:21 15 about what ought to be done with that money.

16 THE COURT: It's a cumbersome process to put
17 money in the registry of the Court. You have a trust
18 account?

19 MR. MACPETE: I do, your Honor.

20 THE COURT: Why don't we do that? If we can't
21 do that, Mr. Baron and Mr. Krishan are going to put
22 \$200,000 in your trust funds. If we got money problems, I
23 can solve the money problems. We will put money in the
24 trust funds and pay out what needs to be paid out.

25 MR. MACPETE: And \$325,000 at least being held

09:22 1 by Hit Farm, and if the defendants essentially issue a
2 directive along with me, they will wire that money in my
3 trust account. That's a perfect solution.

4 MR. RAWLS: The money problem is that we need to
5 renew the names. It's that simple. And right now my
6 understanding is the money that's being made off them from
7 the advertising clicks and all of that is not enough to do
8 that. Mr. MacPete's clients want to take --

9 THE COURT: You told me \$7,500. That's \$50,000.
10 That's not correct --

11 MR. RAWLS: If we're just talking about the time
12 period between now and the hearing, we have taken care of
13 the money problem for that.

14 THE COURT: Why can't you give the information
09:22 15 on the portfolio?

16 MR. BELL: That's like 650,000 domain names.
17 It's a big difference.

18 MR. RAWLS: We can give them information, Judge.
19 I just want to limit the scope of it to tell me client
20 exactly what he has to do. I'm being told it's going to
21 take time. First of all, Judge, yesterday I got just as
22 one chunk of documents those twelve hundred documents that
23 represented only a small portion of names deleted before
24 Judge Lynn's order. I don't know exactly where these
25 documents are. And I don't know generally where they are.

09:23 1 This is a document-intensive case, data-intensive case
2 printed out in some places and electronically in other
3 places. And without staff and programmers, my client is
4 telling me he's going to have a hard time coming up with
5 the broad categories they are asking for. They want to --
6 Believe me, I want to know what it is.

7 THE COURT: Your client can't tell us that? He
8 is the registrar and can't tell us what is in this
9 portfolio.

10 MR. MACPETE: Your Honor, Judge Lynn had the
11 same incredulity that you had, and she said, Mr. Bell,
12 Either your client can produce it or I will issue an order
13 that lets the plaintiff with all of their programmers and
14 experts figure it out. And if that's the answer, we'll be
09:24 15 happy to go over there and figure it out.

16 MR. BELL: For the most part, I will have to
17 confer with my client. But as a general rule, I don't
18 have a problem with the concept. They also own a
19 registrar, and we've got some trade secret stuff like I'm
20 sure he would disagree for us to go over to theirs. I
21 think my client would be agreeable to a neutral, and they
22 would be agreeable to pull that information.

23 THE COURT: This doesn't make any sense. For
24 the registrar not to have a list of the portfolio. It
25 doesn't make any sense. If he doesn't have the list and

09:25 1 he can't do the list, I'm sending them over. I'll do what
2 Judge Lynn suggests. So you either give him a list of
3 their portfolio, and if you don't have a list, I'm sending
4 people over to your computer.

5 MR. RAWLS: Would the Court be amenable to
6 allowing us a reasonable amount of time, say, by the end
7 of today to make a decision about which of those things is
8 going to happen? If they are going to get to do it, there
9 is not going to be a risk of client information. If his
10 clients do it the, highly confidential part doesn't apply.

11 THE COURT: That is true it doesn't apply. But
12 it's not sensible for the registrar not to know what the
13 portfolio is. As I say, he has to protect the property.
14 If he can't even know what the property is, that's a
09:26 15 problem. Let me tell you, I don't mind sending a third
16 party over. It would be at your expense, and Mr. Baron
17 will put the money into Mr. MacPete's account, whatever
18 that is, and I'll send the third party over, and we'll put
19 the third party under a highly confidential agreement, and
20 Mr. Baron will put the money in Mr. MacPete's account and
21 that's it.

22 MR. MACPETE: Your Honor, this is a stall
23 tactic. I'm not accusing these lawyers. They were not
24 getting the story from their client. These files are
25 electronic. Every week he has to send out an electronic

09:26 1 file. The idea that he doesn't have it, as your Honor
2 said, is ludicrous. He has it in an electronic form, and
3 he doesn't want to produce it. So he's telling his
4 lawyers he doesn't have it or not able to produce it, and
5 that's not true. When we were in state court and dealing
6 with the prior lawyers, we all agreed this who-is
7 information needs to be produced. That's how we get to
8 the bottom of what was a third-party customer name and
9 what needed to be split. But they weren't able to get
10 their client to turn over the information, and so we
11 subpoenaed it from Iron Mountain, and he ordered the prior
12 lawyers to quash the subpoena so we couldn't get the
13 information.

14 THE COURT: Do you have the capacity within your
09:27 15 law firm to do this?

16 MR. MACPETE: Your Honor, to be honest I have no
17 idea whether anybody at my law firm can do it, and I know
18 my clients can do it. If your Honor orders that he would
19 produce it or my clients get access, I feel confident he
20 is going to turn it over.

21 MR. RAWLS: And I just want to know what we're
22 talking about, the who-is information. I don't know all
23 the information necessary to pry the parties with the
24 basis of what the list is or isn't. But whatever I want
25 to do is do it in a reasonable way. Especially under the

09:28 1 time constraints. So if we're talking about the who-is
2 information and the last file he had to send to Iron
3 Mountain that has the information in it, we can do that.

4 MR. MACPETE: Well, your Honor, I have three
5 other things that are related to that. He asked a good
6 question. Number one, we need the who-is information.
7 That's essentially the record title stuff on all the
8 domain names on his registrar so that we can sort out
9 which are third-party customers and which are the names at
10 issue.

11 Second, I need a list of the domain names that
12 he deleted, and Judge Lynn specifically said in the
13 transcript that was something he was going to produce or
14 she was going to give us access to his computers to figure
09:28 15 out.

16 MR. RAWLS: That's printed out.

17 THE COURT: Okay.

18 MR. MACPETE: Third, I need the financial
19 information about what the domain names have been doing.
20 He's been operating this stuff and not giving the money
21 over under the settlement agreement, and we don't have any
22 access to the data he's been getting about what money is
23 earned and where it's going, and we need that.

24 THE COURT: And that's collected where?

25 MR. MACPETE: It's collected at the monetization

09:29 1 company, and in most circumstances he would have a log in
2 at the monetization company that will allow him to log
3 in --

4 THE COURT: So that would be ordering him to
5 give authority to the monetization company to produce the
6 information?

7 MR. MACPETE: Actually the easy way would be for
8 him to give us the passwords for the various monetization
9 companies that he's currently using, and we can get in and
10 download the information.

11 MR. BELL: That's assuming he's using a
12 monetization, and that's not the case.

13 THE COURT: Well, he can give them the codes,
14 and if he is not using it, there will be nothing there.

09:30 15 Can you do that, Mr. MacPete?

16 MR. RAWLS: So it would be confidential?

17 MR. MACPETE: It's about their names.

18 MR. RAWLS: That would assume we have a list
19 that we have already pared down.

20 THE COURT: I tell you, the problem is these are
21 all things in the defendant's possession. The defendant
22 should have these in readily identifiable form. If the
23 defendant doesn't, I have to take extraordinary steps.
24 All of this would be under the confidentially order, not
25 under the highly confidential order, and your clients

09:30 1 cannot use this information for improper purposes at all.

2 MR. MACPETE: Understood. We would want it to
3 be confident. It shouldn't be highly confidential.

4 THE COURT: You can prepare the order, but I am
5 going to give you the who-is information, and I am going
6 to give you -- You already have the deleted names
7 information. I am going to give you the information from
8 the monetization companies by giving you the passwords
9 codes and so forth. I am going to give you that.

10 MR. MACPETE: In addition to that, your Honor,
11 they represented to Judge Lynn that the names they deleted
12 were names that were worthless, not making much money.
13 That obviously means they had some kind of records or
14 reports or something from which he made the decision that
09:31 15 these are the bad names that I want to get rid of. My
16 clients don't agree with that representation to the Court,
17 but we need to get his document on which he based the
18 decision to delete these domain names and see what he was
19 relying on when he told the Court these were bad names.
20 That's not the information we have. So we need those
21 reports as well.

22 THE COURT: You'll get those. By three o'clock
23 this afternoon. If Mr. Baron says he doesn't have the
24 ability to produce that information, then I'll send your
25 people in.

09:32 1 MR. RAWLS: Your Honor, that question by my
2 client may depend on the date it is to be done by. By
3 next Monday as opposed to Wednesday, depending on the
4 deposition going forward, that could affect his answer.

5 MR. MACPETE: That was part of the reason why we
6 were here. I was supposed to have his deposition
7 yesterday. I had a court reporter waiting for hours and
8 videographer waiting for hours. Some of them they said
9 we'll give you some of these documents, but you can't have
10 them until next Wednesday. And I think they are still
11 going to ask the Court that their depositions are not
12 going until next Wednesday.

13 THE COURT: Well, I will order all of that
14 information produced Tuesday by three o'clock in the
09:32 15 afternoon. If it's not -- And by the way, you have to
16 make the decision by today at three, and if you make the
17 decision I can't do it by Tuesday at four, then we're
18 sending in Mr. MacPete's clients.

19 MR. MACPETE: And I guess to the extent that
20 means we're going to start up with the deposition
21 schedules with their depositions next Wednesday, I come to
22 the last problem of we obeyed the court order. We
23 listened to Judge Lynn. We did what she asked us to do.
24 I produced my clients on three days' notice, and my
25 clients all live in California. So I have four people

09:33 1 that had to fly out here to give corporate or individual
2 depositions pursuant to their notice at the last minute,
3 and that cost thousands of dollars in plane tickets. And
4 yesterday when we should have been taking depositions with
5 documents, instead we were sitting around talking about
6 whether Mr. Baron felt like his personal financial
7 documents were relevant. And I have court reporter time
8 and videographer time that got wasted. Yesterday on the
9 phone you said what I am going to do is assess cost or
10 maybe order the depositions be taken in California. I'm
11 not sure which way your Honor wants to go with that. But
12 I would ask either as a result of the defendants having to
13 have this stuff moved on when we complied with the order
14 at great expense, that we be compensated for our
09:34 15 attorneys' fees and court reporter and videographer fees
16 and the travel costs or in the alternative that you order
17 these depositions to take place at my offices in
18 California so my clients don't have to incur the travel
19 expenses again. But I would still be asking the Court to
20 order the time wasted yesterday reimbursed.

21 THE COURT: Well, I'm not going to make a
22 decision about assessing cost.

23 MR. BELL: Just so it's fair, may I say
24 something? I had a deposition of Munish Krishan, and I
25 was ready, willing and able to perform on that, and I

09:35 1 haven't seen any documents. I'm out money on
2 videographers, and I could have taken a certificate of
3 nonappearance, and I didn't because they were working it
4 out. So we're out plenty of money, too. I have had a
5 case, your Honor, with Judge Ramirez, and they are the
6 plaintiffs in this case, and because they are the
7 plaintiffs, they filed in the Northern District of Texas.
8 There is plenty of case law that the plaintiff even though
9 they are out-of-state residents, because they chose
10 this -- and I think it's Emkey versus Compana.

11 THE COURT: You know, guys, you are arguing
12 about the shape of the table. We're going to do the
13 depositions here, but could be somebody is going to pay a
14 lot of money before this is over about the cost. We'll
09:35 15 take all the depositions. Been a lot of expense. People
16 are just completely spending treasurer in this case beyond
17 words. This is why we're probably going to kill
18 litigation in this nation. This is a great example of
19 why, because we can't agree to the shape of the table.

20 MR. BELL: I say you hold us in contempt and
21 force us to the jail and beat us until --

22 THE COURT: You do what you want to do. I never
23 require people to do what they don't want to do. If you
24 want to sit down and resolve the case, do. If not, that's
25 fine.

09:36 1 MR. RAWLS: I understand the Court is not going
2 to make a ruling on cost, but while I have the
3 opportunity, I think it's important that the Court
4 understand that I as an officer -- I have never been
5 before you. I became involved in this lawsuit Friday
6 morning just in time for the first of three telephonic
7 hearings with Judge Lynn in which all of this was granted
8 and ordered. And since then I have done nothing else but
9 try to figure this out. And as soon as this Court moved
10 the hearing, I immediately tried to get the depositions
11 moved, and by that time it was already too late by a
12 matter of hours on the plaintiff's plane time. I think I
13 made it clear that we needed more time to get the
14 documents done. I don't want the Court to think I have
09:37 15 been stalling on behalf of anyone because I have not.

16 THE COURT: You sound like you are good lawyers
17 an good guys an working hard but we have to break through
18 this. Somewhere or another we have to figure out how to
19 resolve this case or get it in a position that a judge can
20 resolve this case. If you don't want to do anything
21 between now and the 1st, except argue with each, that's
22 fine. But on the 1st somebody is going to make a
23 decision, and you can do whatever you want. My view is
24 we're going to take the depositions here. I don't want
25 anybody to be calling me about this portfolio issue. Mr.

09:38 1 MacPete gets what he wants, and if he doesn't get it on
2 the portfolio issue, which is the crucial issue here, then
3 there will be hell to pay. And if you guys say we can't
4 do it, then I'm sending his people in there. That's fine.
5 We can do it either way. Judge Lynn made a good decision
6 on that.

7 MR. RAWLS: With regard to giving them access or
8 directing the monetization company to tell them how much
9 money has been made on these names, my understanding is --
10 And I don't know what all information they have. I think
11 there are only certain accounts that Ondova is a party to,
12 and I don't know that they can instruct --

13 THE COURT: You are not going to instruct. You
14 are going to give the passwords so they can go directly.

09:39 15 MR. BELL: I'd ask, your Honor, that they not
16 interfere in any way with any money getting directed and
17 the Court freeze whatever monies, if any, in any accounts.

18 THE COURT: Well, let me tell you, that money is
19 not going out to inappropriate parties or anything. I
20 take it the monetization companies are just holding that
21 money.

22 MR. MACPETE: We don't know, your Honor. He's
23 been moving these things around. So your Honor is fully
24 clear on what the situation is.

25 THE COURT: It's final. You got the access

09:39 1 codes to all monetization companies that have anything to
2 do with your portfolio. So you get all the access codes,
3 period, exclamation point. And if Mr. Baron needs to do
4 something personally to call the companies, he's ordered
5 to do so. He's ordered to make sure that you have access
6 to all the monetization companies.

7 MR. MACPETE: Thank you, your Honor. With
8 respect to the money that's currently being held, is the
9 Court ordering that the parties are going to --

10 THE COURT: If they are just holding the
11 monies -- They are reputable, legitimate people -- we
12 don't have to worry about them doing something stupid.

13 MR. RAWLS: I agree.

14 MR. MACPETE: With respect to Hit Farm, your
09:40 15 Honor, I agree with that, and Mr. Cantner (phonetic) is
16 representing Hit Farm, and he's been working with all the
17 counsel. So I'm comfortable with that. There are two
18 other parking companies who have essentially refused to
19 agree that money is not going to be distributed to him
20 without our consent, and we have had to sue both of those
21 companies. We have a state court lawsuit in California
22 against one and a federal court lawsuit in California
23 against the second.

24 THE COURT: That is not an injunction issue.
25 That's just a damage issue. If the money is being sent to

09:41 1 the wrong places, then, you know, that's a damage issue.

2 MR. BELL: Your Honor, I'd like to get their
3 pass codes. This is according to my client. They've got
4 a million dollars at Google. Google is holding a million
5 dollars in monetization funds, and I'd like to be able to
6 get whatever information there is to that that relates to
7 the portfolio.

8 MR. RAWLS: If that's true, we would like that
9 because the settlement agreement requires a true-up of all
10 monetary funds during the litigation.

11 MR. MACPETE: Your Honor, please go back to look
12 at the settlement agreement because the settlement says in
13 Paragraph 56 fifty-fifty true up of all monies paid during
14 the litigation. It's not all monetization monies at any
09:42 15 time in the past. This Google money that they are talking
16 about is something that's pre-litigation, pre-underlying
17 litigation and not dealt with in the settlement agreement
18 at all. So we're trying to get a free fishing expedition
19 of, hey, let's see what their clients may have at Google.
20 It's got to be mutual.

21 THE COURT: No, no, it doesn't have to be mutual
22 always. As I understand Ondova is the registrar and
23 directs the monetization companies to hold certain monies
24 that come com from the portfolio.

25 Now, what is the Google money? Explain to me

09:42 1 how Ondova has some interest in the Google money?

2 MR. BELL: Because pursuant to the MOU, Google
3 was one of the monetization companies -- When the
4 parties -- When Baron and Krishan were partners and Ondova
5 was serving as the registrant.

6 THE COURT: I understand there is --

7 MR. BELL: Basically during the life of the
8 underlying litigation, there is a million dollars being
9 held at Google that was made off of my clients' money and
10 their client. And they are holding a million bucks and
11 trying to hide the ball from us. So we want to make sure
12 that we get that information as well, your Honor.

13 THE COURT: Show me in the MOU what we're
14 talking about. It says here, after all monies held by
09:44 15 USVI entities -- And the US entities are HCB LLC; RIM LLC;
16 Simple Solutions LLC; Search Guide LLC; Blue Horizons LLC;
17 Four Points LLC; Novapoint, Inc.; and Iguana, Inc.

18 MR. BELL: Paragraph 10. It says "Any
19 monetization money" -- that would include Google --
20 "received by any of the parties," and they've got an
21 exclusive contract with Google with part of our money as
22 well of the Manila Portfolio which we're talking about
23 will be split fifty-fifty. That means Google money, your
24 Honor.

25 MR. MACPETE: Your Honor, with all due respect,

09:45 1 Mr. Bell is confused. If you remember the underlying
2 litigation started with Mr. Baron engaging in self-help
3 and taking down our domain names, and he has operated our
4 domain names from November 13, 2006 to today. So there is
5 no Google monetization revenues for him to get any
6 discovery about. I have nothing to produce because --

7 THE COURT: Excuse me. Mr. MacPete, tell me
8 what is the Google money.

9 MR. MACPETE: I'm not sure what his client is
10 talking about, your Honor. Like I said, we haven't had
11 our domain names to monetize since the date he hijacked
12 them.

13 MR. BELL: Your Honor, I want to be clear about
14 this hijacking issue.

09:45 15 THE COURT: What are the Google funds that you
16 are talking about? They come from the portfolio?

17 MR. BELL: They have been holding many -- Google
18 has been holding money that the portfolio generated for
19 the last couple of years. That's number one.

20 THE COURT: Google has been holding money that
21 the portfolio -- the Manila portfolio generated for the
22 last couple of years.

23 MR. BELL: I need to clarify something real
24 quick. I think this might help you understand. These
25 guys were partners despite what Mr. MacPete said.

09:46 1 THE COURT: They had a partnership agreement.

2 MR. MACPETE: No.

3 MR. BELL: The Search Guide Agreement. I got
4 plenty of evidence on that. But Mr. Krishan and Netsphere
5 and Manila sold their whole Manila portfolio for 4.2
6 million dollars to the USSI parties, and Mr. MacPete can
7 tell you -- How much did you get? 3.7 million dollars for
8 selling the portfolio.

9 MR. MACPETE: He's arguing the underlying
10 litigation about whether the deal in the Virgin Islands
11 occurred or not.

12 THE COURT: Give me an account of the Google
13 money under seal, and I'll take a look at it.

14 MR. MACPETE: I don't have any to give you.
09:47 15 He's not making sense. We haven't had the names since
16 November 13, 2006.

17 THE COURT: Is there any money generated from
18 the domain names into some Google account?

19 MR. MACPETE: And I don't have any of that
20 information. If he wants to get discovery from Google,
21 that's fine.

22 THE COURT: I'm asking you. They are making the
23 representations. You don't know whether there is at any
24 time during this time that the Manila Portfolio generated
25 money that is held in some way by Google?

09:48 1 MR. MACPETE: I think what he's talking about,
2 your Honor -- And it's nothing we had anything to do with.
3 Is when the portfolio was originally hijacked the first
4 monetization company that Mr. Baron sent the domains to
5 was a company called Oversea.com, and that's a
6 monetization company that uses a Google feed to make money
7 on domain names. After the domain names were hijacked
8 because we were at Manila and Netsphere, those names were
9 licensed to Google. So when Mr. Baron engaged in
10 self-help, he breached those agreements. Google was
11 understandably pissed about the fact those names were
12 taken away. So Google had a contract with Oversea, and
13 when Google found out that Oversea was now monetizing
14 names which Google already had under a license from my
09:49 15 clients -- I know this from second or third hand -- Google
16 told Oversea you don't have the right to monetize these
17 names. So you have this in breach of our agreement with
18 Netsphere. So we're not paying you. And I understand
19 there is a lawsuit between the Virgin Island parties with
20 the Oversea Company about the payment of the money. We
21 don't have an account at Google. We didn't have anything
22 to do with Google telling them they weren't going to pay.
23 If he wants discovery about whether Oversea or Google has
24 the money, I'm cool with that, but I don't have the
25 documents.

09:50 1 MR. BELL: Can I get the contract with Google
2 and whatever passwords they have, if any?

3 THE COURT: Address it to me. Address all
4 comments to me.

5 THE COURT: What about Oversea? What do you
6 have with Oversea?

7 MR. MACPETE: We weren't the ones who did that.
8 He was the -- He has whatever pass codes or whatever that
9 was with Oversea. That was being done in derogation of
10 our license rights.

11 THE COURT: What is your contract with Google?

12 MR. MACPETE: We have a contract with Google
13 that allows Netsphere to monetize third-party domain names
14 through Google's absence program. And it's nothing to do
09:50 15 with this here. All this is the defendant trying to
16 harass my clients with getting their confidential contract
17 with Google which has a penalty of death if you turn it
18 over to anybody.

19 THE COURT: I'm entering an order that you let
20 me see Netsphere's contract with Google under seal in
21 camera, and I'll see what this has to do with this.
22 Otherwise, I wouldn't require anything to be done about
23 that. So give me that by next Tuesday at ten o'clock.

24 MR. MACPETE: Key point to remember. After
25 November 13, 2006 we didn't have control of the portfolio,

09:51 1 and we didn't get any of the money.

2 THE COURT: You can attach an advisory with your
3 in camera submission to me giving me whatever explanation
4 you want.

5 MR. RAWLS: Your Honor, if we're finished
6 talking with Mr. MacPete, the documents he wants from my
7 client I am going to defer to Mr. Bell on any additional
8 documents that he may want from the plaintiffs.

9 THE COURT: Okay. What else, Mr. MacPete?

10 MR. MACPETE: I think that's it for the most
11 part. Let's hear what Mr. Bell has to say.

12 THE COURT: Mr. Bell.

13 MR. BELL: I'll talk to Mr. MacPete. I have to
14 commend him. That 279 RFP is probably too much, but I
09:52 15 have to give it to him. 211 of them were done from Locke
16 Lord. They were so good I had to use them, but fifty of
17 them were basically contention RFP's, and there have been
18 allegations in this TRO talking about -- and it's brought
19 up on behalf of every single plaintiff individually, and I
20 understand you don't want to give out financial records,
21 and we're okay with that. But I need the corporations's
22 financial records, and I think Mr. MacPete is agreeable to
23 that because they are claiming the result is Netsphere
24 parties are on the verge of bankruptcy, and anything
25 having to do with the revenues, damages, anything like

09:53 1 that, irreparable harm. Other than Munish's personal
2 records.

3 THE COURT: I'm here to talk about what you
4 haven't agreed upon.

5 MR. BELL: Yes, we're good.

6 THE COURT: So if you have agreed on it, I don't
7 need to talk to you about it.

8 MR. BELL: I wanted to make sure that was still
9 in play, your Honor.

10 THE COURT: Anything else?

11 MR. BELL: No, permission to withdraw, your
12 Honor.

13 THE COURT: Permission to leave the battlefield.

14 MR. BELL: May we be excused, your Honor?

09:53 15 THE COURT: I want to see where we are in regard
16 to the depositions now.

17 MR. MACPETE: Two things, your Honor, with
18 respect to that who-is information, a lot of that
19 information is kept electronically, and if it's kept
20 electronically, then I want it in electronic form. If he
21 prints out 50,000 pages, I can't do anything with it.

22 THE COURT: Electronic form is fine.

23 MR. MACPETE: And your Honor indicated now under
24 West Texas Rules.

25 THE COURT: If you can't agree, plaintiff gets

09:54 1 to take Mr. Baron's deposition first, and defendants get
2 to take Mr. Krishan's deposition and whoever else is next.
3 So you will do it in a series.

4 MR. MACPETE: Appreciate it.

5 MR. BELL: Your Honor, are we saying the
6 depositions are going to start probably on Wednesday, is
7 what I'm assuming?

8 THE COURT: That's what I'm assuming.

9 MR. BELL: That's the 25th. I think we've got
10 probably two, three, five -- I think we can get it in done
11 in time.

12 THE COURT: Nobody is going to be resting on any
13 weekends I don't think.

14 MR. BELL: Just real quick. A couple of things
09:55 15 I need to go over my client wants produced. If what
16 Mr. -- I think I will be two more minutes, your Honor, if
17 you don't mind. It just got brought to my attention. If
18 they were the alleged owners and we hijacked it, I would
19 like to get any registration or renewal information from
20 them that's possible in an electronic format as well.

21 THE COURT: Well, in regard to portfolio
22 information, both of you ought to be -- For example, you
23 have a portfolio you think you own, Mr. MacPete. That
24 portfolio information and the domain names on that should
25 be given to the other side.

09:55 1 MR. MACPETE: I have told them that we were
2 giving them that, and it has to be produced in electronic
3 form?

4 THE COURT: Yes, everything in electronic form.
5 Anything involving the portfolio of the Manila needs to be
6 produced going both ways.

7 MR. BELL: With respect to money received from
8 the disputed domain names from them, all revenues and
9 checks, I would like those produced. They are saying
10 there are none, but I'd like to make sure --

11 THE COURT: Well, you are talking about since
12 November of 2008 or --

13 MR. BELL: No, since 2004 is when these parties
14 allegedly went into business together. They are going to
09:56 15 have a lot of the Google information. At one point, I
16 think the portfolio was making 22, 24 million dollars a
17 year when everybody was happy.

18 MR. MACPETE: This is a complete fishing
19 expedition from the underlying litigation. Their party
20 has been directing the lawyers to try to reopen the
21 litigation in the state court, and he asked for this
22 discovery in the state court, and the judge told them no.
23 This is an attempt --

24 THE COURT: Right now as far as I'm concerned,
25 financial information is not going to be discovered by

09:57 1 either side. I'm talking about -- I'm here being asked to
2 look at the settlement and MOU, and that's all I'm looking
3 at.

4 MR. BELL: Your Honor, I think right now I'll
5 pass.

6 THE COURT: Okay.

7 MR. MACPETE: Thank you, your Honor. We
8 appreciate your time today. I'm sorry we went past your
9 9:30.

10 THE COURT: I know you are working hard, but at
11 some point we have to do this and get the discovery done
12 and get the depositions taken and then show up here on the
13 1st. It's not going to be an easy thing for me to try to
14 resolve this, but I am going to do the best I can. My
09:58 15 main view is I take it this portfolio is valuable. And so
16 if nothing else can be done, as I say, I can put all the
17 names in a receivership and put them under some other
18 registration, and then, you know, we can wait and see what
19 happens. I don't know how much that will cost or
20 whatever. But I want you to know my goal is protect this
21 stuff and not let it get lost in cyberspace.

22 MR. MACPETE: Your Honor, if we're not able to
23 get the settlement agreement moving under the relief we
24 requested at the preliminary injunction, we will support
25 your idea that all the names should be given to a receiver

09:58 1 and have them operated by the receiver so they can be
2 protected. But I'm hoping we can get the settlement
3 agreement moving with the lawyers -- and they are working
4 hard -- or by a preliminary injunction. But if not, a
5 receiver is a good idea.

6 THE COURT: It may be at some point I could be
7 challenged about deciding the injunction. Then I can use
8 my inherent powers, you know, to preserve the status quo
9 and preserve the property and just wait for a damage suit.
10 I have some alternatives here that I can use. But I don't
11 want everybody to think that if, for example, I don't
12 enter the injunction -- maybe it's not clear to me -- but
13 I am going to protect this property. It's under my
14 jurisdiction. I'm going to protect it and it seems
09:59 15 valuable to me, and as I say, we don't want it lost.

16 Don't think I am without any bullets in my gun because I'm
17 not. So it seems to me in everybody's's best interest --
18 less expensive and everything else -- to figure out a way
19 to resolve the case. If you can't, you'll come here. No
20 self-help by anybody. I'll keep this case under my
21 jurisdiction for ten years, and we'll let a receiver skim
22 everything off the top that the receiver needs to skim and
23 the registrar needs to take, and whatever is left, I will
24 put that in the registry of the Court, and you guys, may
25 be by 2050 I'll distribute it. So at any rate, if there

10:00 1 is any value here, let's preserve it, and there sure ought
2 to be enough value to go around, and if there is not, a
3 receiver can tell me so five years from now.

4 MR. MACPETE: That's exactly what we want. We
5 thank you very much.

6 MR. BELL: We're going to do our best to bang it
7 out.

8 THE COURT: I saw three good lawyers today. I
9 know that three good lawyers will do their best. You
10 acquitted yourself well and I know you have been working
11 hard, but I wanted the clients here to let them know what
12 the deal is. And I'm not going to let this stuff
13 disappear in cyberspace. I am going to take charge of it
14 and save the value for whomever needs it, and if we have
10:01 15 to have a receiver every four or five years, if you agree
16 to a fifty-fifty split, I can dole the money out every
17 five years or something. I'll get the receiver to kind of
18 do a numbers split, and I'll see which money goes with
19 which numbers and take it from there. At any rate, the
20 maintain thing is the rule of law needs to prevail in this
21 matter. It's very important. We're all bound by the rule
22 of law, and if not, life is chaos and that's bad, and I
23 don't have the feeling with so many lawsuits and arguments
24 that we're making progress with the rule of law, and
25 that's my goal, and I think I can do it. One way or the

10:02 1 other, I think I can do it. Just remember, I do have
2 access to the Army, Navy, Marines and Air Force.

3 MR. MACPETE: One last thing, your Honor. My
4 clients reminded me that the deleted domain list that Mr.
5 Rawls said is 1,200 pages and that is something I think
6 electronically --

7 THE COURT: Everything is to be exchanged
8 electronically.

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C E R T I F I C A T I O N

I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing Pages 1 through 113 and that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

s/Cassidi L. Casey

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
CSR NUMBER 1703

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